

**Exhibit F**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
. Case No. 23-10831 (MFW)  
LORDSTOWN MOTORS CORP., .  
*et al.*, . (Jointly Administered)  
. .  
. Courtroom No. 4  
. 824 Market Street  
. Wilmington, Delaware 19801  
Debtors. .  
. Thursday, July 27, 2023  
. . . . . 9:30 a.m.

TRANSCRIPT OF SECOND DAY HEARING  
BEFORE THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commenced at 9:30 a.m.)

2 THE COURT: Good morning. This is Judge Walrath.  
3 We're here in the Lordstown Motors case. I will turn this  
4 over to counsel for the debtor to get us started on our  
5 agenda.

6 MR. DEFRANCESCHI: Morning, Your Honor. Dan  
7 DeFranceschi from Richards, Layton & Finger, proposed counsel  
8 for the debtors. Thank you for hearing us this morning.

9 We have with us today our friends from White &  
10 Case and in particular, Mr. Turetsky and Mr. Zakia, who will  
11 be handling the bulk of the hearing today.

12 Your Honor, I believe at this time it'd be  
13 appropriate for me to turn the podium over to Mr. Turetsky to  
14 start working through the items on the agenda, most of which  
15 are either -- one is continued and virtually everything else,  
16 Your Honor's entered orders. But with that, Your Honor, I'll  
17 turn it over to Mr. Turetsky.

18 THE COURT: Thank you.

19 MR. DEFRANCESCHI: Thank you.

20 MR. TURETSKY: Good morning, Your Honor. David  
21 Turetsky of White & Case for the debtors. Very nice to see  
22 you again, and thank you for making time for us. And thank  
23 you for entering the various orders that were submitted on TOC  
24 and CNO. The company very much appreciates the relief that  
25 was entered, and I think it should streamline things for

1 today's hearing, notwithstanding that we do have three items  
2 that will be on the agenda. So thank you for that.

3 Before proceeding into the agenda, I just want to  
4 make some notes. I am joined today, as Mr. DeFranceschi, has  
5 said, by my partner, Jason Zakia, as well as other members of  
6 the White & Case team.

7 Also joining us here today are Adam Cole, who is  
8 the debtors' CFO. I know that there are other members of the  
9 debtors' management team who are on, who are listening, as  
10 well as Jeff Finger of the Jefferies firm, which is the  
11 investment banker. Mr. Cole and Mr. Finger will be witnesses  
12 with respect to the three motions that Your Honor will be  
13 hearing today.

14 Before launching -- and I'd just like to lay out  
15 an overall proposed approach for the hearing, if it pleases  
16 Your Honor. I think we would start with a brief update on  
17 what has happened since the first day of hearing, followed by  
18 a presentation of the evidence with respect to the three  
19 motions that are up on the agenda. This was something that  
20 was discussed with both the committee and with counsel for  
21 Karma.

22 We thought that it made sense to view the evidence  
23 in one shot so that you're not hearing from witnesses back and  
24 forth on the various motions and then launching (inaudible).  
25 Does that make sense to Your Honor?

1 THE COURT: That makes sense. Thank you.

2 MR. TURETSKY: Thank you, Your Honor. So starting  
3 with a brief update on July 11, the UST formed the Official  
4 Committee of Unsecured Creditors for these Chapter 11 cases.  
5 The committee consists of three of the debtors' trade  
6 creditors. They are Barry Leonard and Company, Superior Tam,  
7 and SA Automotive. The committee has retained the Troutman,  
8 Pepper, Hamilton Sanders firm as their counsel, and Huron  
9 Consulting as their financial advisor.

10 The representations are being led by Ms. Deborah  
11 Kovsky and Mr. Francis Lawall of the Troutman firm as Counsel  
12 as well as Laura Marcero of Huron, and you will be hearing  
13 from Ms. Kovsky and Mr. Lawall today, and I anticipate that  
14 you'll be hearing from Ms. Marcero as these cases proceed.

15 Since their retention, the debtors have worked  
16 closely with the Committee's advisors to get the Committee up  
17 to speed and to resolve any concerns regarding the relief that  
18 the debtors have been seeking. And as Your Honor will have  
19 seen, we were able to resolve the Committee's comments in a  
20 very amicable and consensual fashion. And I look forward, as  
21 do the debtors, of working with the Chapter 11 (inaudible)  
22 fashion.

23 In addition, we've also continued to work with Mr.  
24 Hackman of the US Trustee's office to address his comments,  
25 and we'd like to thank him, as well, for his consideration as



1 part of the Chapter 11 cases.

2           Moving to the cases themselves, the debtors have  
3 worked hard and in many instances around the clock to quickly  
4 advance the cases. As Your Honor will recall from the first  
5 day of hearing, the debtors have filed the cases facing major  
6 distress that's threatened the financial conditions of the  
7 debtors and the debtors' ability to operate.

8           I'm not going to rehash everything but these  
9 issues (inaudible), multiple litigations that include not only  
10 the Karma litigation that you'll be hearing about today, but  
11 also various securities litigations and other matters. And  
12 there's the reality that the company would not be able to  
13 operate in the long term, absent a near term transaction that  
14 would inject funds.

15           And so the purpose of filing these cases was to  
16 use the tools of Chapter 11 to effectively and quickly  
17 maximize value for creditors and for stakeholders. And that  
18 really involves three work fronts at least. But three that  
19 we'll talk about here.

20           The first is a process to market and sell the  
21 assets in an expedited but appropriate fashion, (inaudible)  
22 process centralize the claims against the debtors before a  
23 single court, before Your Honor, so that they can be  
24 established and quickly resolved. And then thirdly, address  
25 the issues with Foxconn.

1           And it's notable that given the lack of operations  
2 and the struggles with retaining an employee team of uncertain  
3 futures, new obligations and duties as a result of bankruptcy  
4 filings, time is of the essence. So to that end on the sale  
5 front, we did file our bidding procedures motion on the first  
6 day. The company has established a data room and signed up  
7 NDAs with potentially interested parties who are in the data  
8 room and doing work.

9           Assuming there are (inaudible) procedures, we  
10 would envision that indications of interest would be due on  
11 July 31st with definitive business on August 24 at a sale  
12 hearing subject to Your Honor's availability in mid-September.

13           In addition, on the post front, the debtors are  
14 pushing hard to file their schedules by August 1, and we will  
15 be seeking to set a bar date shortly thereafter. And that's  
16 so that the claims pool can be quickly established. We know  
17 what we're dealing with in terms of liability (inaudible) the  
18 resolution process can really begin.

19           Staying with the claims process, and this is  
20 germane to today's hearing, you will have seen that Karma  
21 filed a motion for lift-stay -- lift the automatic stay to  
22 liquidate its claim in the Central District of California, and  
23 the debtors have, of course, filed their estimation motion.  
24 The parties have objected to each other's requests for relief,  
25 and we'll be talking about that at today's hearing.

1           Stated simply, we think that litigating the claim  
2 outside of this Court would unduly delay things, but we'll get  
3 to that. And then lastly, that puts us to Foxconn. We've  
4 noted that Foxconn filed a motion to dismiss or convert the  
5 case. The debtors will be objecting to that motion. We've  
6 been in discussions with Foxconn as to a schedule, and we will  
7 revert to Your Honor as soon as that schedule is established.

8           So that's the debtors' update, at least at this  
9 point, unless Your Honor has any questions. I know that the  
10 Creditors Committee counsel would like to make some comments,  
11 but if Your Honor has any questions, I'm happy to answer them  
12 now.

13           THE COURT: No questions at this time. Let me  
14 hear from the Committee.

15           MS. KOVSKY: Good morning, Your Honor. Tori  
16 KOVSKY with Trotman Pepper on behalf of the Official Committee  
17 of Unsecured Creditors. As counsel previously mentioned, my  
18 colleagues Deb Kovsky and Francis Lawall are here on Zoom  
19 today and will be handling the substantive matters on behalf  
20 of the Committee.

21           THE COURT: Thank you. Mr. Lawall, you're muted  
22 still.

23           MR. LAWALL: This is Fran Lawall and Deborah  
24 Kovsky on behalf of the proposed counsel for the Committee.  
25 Your Honor, as we indicated in the papers that we filed with

1 the Court, we believe this is a pretty unique case. There was  
2 \$136 million of unencumbered cash that was available at the  
3 beginning of the case, and therefore the Committee has been  
4 laser focused from the beginning to try and preserve that cash  
5 to make sure that the case is administered efficiently and to  
6 avoid any unnecessary litigation.

7           You can see some of that, Your Honor, with respect  
8 to the modifications made to the second-day motions, where we  
9 have gotten various information and other changes to the  
10 second-day motions again, to try and preserve cash and to try  
11 and move this case forward.

12           We do recognize, however, Your Honor, that the  
13 assets of this company need to be marketed, need to be  
14 marketed quickly, and need to be marketed in a way in which  
15 the litigation does not get in the way of doing so. We do  
16 believe that the bid procedures themselves are procedural and  
17 not substantive.

18           We also recognize the fact that here, Your Honor,  
19 if there is going to be a sale as a going concern, it needs  
20 to happen quickly, and we are in agreement with respect to the  
21 debtors' proposed timetable. We hope that there will be a  
22 going concern sale, but we won't know. But if there is a  
23 going concern sale, we recognize it will be the preservation  
24 of jobs, the creation of value, and maybe even the creation of  
25 additional monies for Karma in the event that they are

1 ultimately determined to be a sale.

2           Therefore, Your Honor, from the Committee's  
3 perspective, we would ask that the sale process continue on  
4 the current timeline, that the stay remain in place, and this  
5 case remain, in Chapter 11 for the moment because, Your Honor,  
6 as you will hear, there are multiple litigations beyond just  
7 simply the Karma and the Foxconn litigation, which are going  
8 to have to be organized in a -- it's going to have to be dealt  
9 with in an organized and an efficient manner.

10           The Committee is going to remain active throughout  
11 this case, and the Committee is going to be laser focused in  
12 terms of trying to make sure that remaining cash is not  
13 burned.

14           One of the things that's on the forefront for us,  
15 Your Honor, is the fact that the trade debt itself, as  
16 mentioned in multiple papers filed with the Court, may be as  
17 low as \$20 to \$30 million. So to the extent that this case  
18 moves forward, we want to make sure that there's a  
19 preservation of that cash to ensure that the unsecured  
20 creditors are paid in full, as they should be with interest in  
21 this case.

22           Your Honor, going forward, Ms. Kovsky will be  
23 handling the substantive matters with respect to the  
24 litigation as it moves forward this morning. Thank you.

25           THE COURT: Thank you. No other preliminary

1 comments? Seems like that might have been part of the  
2 substantive too, so I will reserve that for the substantive  
3 hearings.

4 MR. TURETSKY: Understood, Your Honor. Let's get  
5 -- David Turetsky. I think that takes us to the evidentiary  
6 enforcement of the hearing, and my partner, Jason Zakia will  
7 be happily met, so I will cede the podium to Mr. Zakia.

8 THE COURT: Thank you.

9 MR. ZAKIA: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. ZAKIA: Jason Zakia, White & Case for the  
12 debtors. We have conferred with counsel to the Committee and  
13 counsel to Karma as to a process. As Mr. Turetsky previewed,  
14 we propose, given the overlap, that we create one evidentiary  
15 record for all three contested matters. With respect to that  
16 debtors have two witnesses, and I believe there is an  
17 agreement that the direct testimony for those witnesses would  
18 be taken by declaration subject to cross. And counsel for  
19 Karma has indicated they do intend to cross examine both  
20 witnesses.

21 So if I can, I'm going to begin with our first  
22 witness, Adam Cole, and ask Mr. Cole to turn his camera on.  
23 Had a little problem with this on the first day, but hopefully  
24 that's all ironed out. Mr. -- sorry, Your Honor.

25 THE COURT: Mr. Kroll's here. Should I have the

1 clerk swear him in?

2 MR. ZAKIA: Yes, Your Honor. Thank you.

3 THE COURT: Mr. Kroll.

4 THE CLERK: Please raise your right hand. Do you  
5 affirm that you will tell the truth, the whole truth, and  
6 nothing but the truth to the best of your knowledge and  
7 ability?

8 MR. KROLL: I do.

9 THE CLERK: Please state your full name and spell  
10 your last name for the record.

11 MR. KROLL: (Inaudible).

12 THE CLERK: Thank you.

13 THE COURT: All right, please speak up, Mr. Kroll,  
14 because it is breaking up a little bit. But can you first,  
15 for the record, state that the statements you made in your  
16 declaration is true and correct, and you don't want to modify  
17 any of it? All right. I can't hear you.

18 MR. KROLL: Can you hear me now?

19 THE COURT: I can hear you now. Yes. All right.

20 MR. ZAKIA: Thank you, Honor. And just for the  
21 record, Your Honor, the declarations that Mr. Kroll is  
22 testifying in support of can be found in docket number 123 and  
23 156, and I'd offer them into evidence at this time.

24 THE COURT: All right. They are admitted subject  
25 to cross examination.

1 MR. ZAKIA: At this point, Your Honor, I'd cede  
2 the podium to counsel for Karma for the cross.

3 MR. SOWKA: Good morning, Your Honor. James Sowka  
4 on behalf of Karma Automotive LLC. The cross examination of  
5 Mr. Kroll will be handled by my partner Jesse Coleman this  
6 morning.

7 MR. COLEMAN: Morning, Your Honor.

8 THE COURT: Thank you. Who's going to go first?

9 MR. COLEMAN: Your Honor, this is Jesse Coleman.  
10 If it please Your Honor, I'll go ahead and proceed.

11 THE COURT: You may.

12 MR. COLEMAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. COLEMAN:

15 Q. Mr. Kroll, I represent Karma Automotive. You  
16 understand that?

17 A. Yes.

18 Q. And you, in fact, in addition to the two  
19 declarations that Mr. Zakia identified at 123 and 156, also  
20 signed a declaration in support of first-day motions, debtors'  
21 Chapter 11 petitions and first-day motions. You recall that?

22 A. Correct, yes.

23 Q. And that would be found at ECF number 15 on the  
24 record. Mr. Kroll, as of the date of the petition, debtors  
25 had approximately somewhere between 136 and \$137 million in



1 cash, is that correct?

2 A. Correct.

3 Q. And the debtors are currently experiencing a cash  
4 burn of approximately \$5 million a month, is that correct?

5 A. It's about six, I think in my declaration we said 4  
6 million of operating costs, 2.2 of bankruptcy expenditures  
7 without funding. The cost of the Unsecured Creditor's  
8 Committee have those estimates.

9 Q. Okay. So when you stated in your first-day  
10 declaration, I point you to paragraph 64, do you have that in  
11 front of you, sir?

12 A. Yes.

13 Q. In the middle of the paragraph says as of the  
14 petition date the debtors have approximately \$136 million in  
15 cash and an estimated monthly cash burn of approximately \$5  
16 million, excluding extraordinary costs and contingent  
17 liabilities. What were you referring to there?

18 A. That was the estimate at that time. The later  
19 declaration is updated to reflect the additional professional  
20 fees that we incur. So I think that the 5 million,  
21 particularly, was prior to the expiration of the Warren Act.  
22 So we've had some decrease in the five, plus we've slowed down  
23 operation, curtailed activities which reduces the five to  
24 about four. And then that is supplemented with (inaudible).

25 Q. I'm sorry, I'm having a hard time hearing you a

1 little bit. You said it's supplemented with what?

2 A. The bankruptcy costs.

3 Q. You do reference elsewhere, you mention in your  
4 reply in support of the estimation motion, which was one of  
5 the declarations that Mr. Zakia identified. And that would be  
6 ECF 156. You said that the debtors are projected to spend  
7 approximately \$6.2 million per month in these Chapter 11  
8 cases; is that correct?

9 A. Correct.

10 Q. And so that 6.2 million would encompass the  
11 operational costs of the organization plus \$2.2 million in  
12 legal spend?

13 A. Yes. For the cases without - or before we have the  
14 estimations or the forecasts from the unsecured (inaudible).  
15 So that 6.2 will go up.

16 Q. Meanwhile, the debtors anticipate that the  
17 attorney's fees, costs, and other expenses associated with  
18 defending the Karma case through trial is approximately 2.5  
19 million; is that correct?

20 A. Correct.

21 Q. So defending the Karma matter through trial would  
22 cost approximately 40 percent of what Karma is already burning  
23 through - or excuse me, that Lordstown is already burning  
24 through in a month; is that right? Approximately. I'm sorry?  
25 Is that correct?

1 A. Yes, sir. Yeah, it's in addition to forecasting.

2 Q. Debtors expect to spend two and a half times the  
3 amount on operations and legal fees in a month compared to  
4 what is anticipated for defending and resolving at least to  
5 trial the Karma litigation. Is that correct?

6 A. Yeah. Although I think there's a distinction  
7 between monthly burn rate and activities that are isolated to  
8 reaching and getting through trial. Right.

9 Q. In fact, the \$2.5 million represents a couple of  
10 months of litigation at least. There are anticipated  
11 depositions, expert work. So we're talking a couple of months  
12 of Karma litigation at 2.5 million. If we looked at a couple  
13 of months of otherwise estimated cash burn on behalf of the  
14 debtors, we're talking about \$12.4 million at least, correct?

15 A. Yeah. If you're thinking the 6.2 times two, that's  
16 12.4.

17 Q. So in the same period of time, Lordstown is going  
18 to be spending on bankruptcy, legal and other operations, four  
19 times the amount than what it was going to spend if it has to  
20 defend against the Karma litigation, approximately, correct?

21 A. But again, the 2.5 is only to get to and through  
22 the trial and none of the subsequent.

23 Q. So the answer to my question is yes?

24 A. Yeah (inaudible).

25 Q. And at this time, Baker Hostettler has not been

1 engaged to represent the debtors in any adversary Karma  
2 litigation as part of these bankruptcy proceedings; is that  
3 right?

4 A. Correct. The application has not been approved.

5 Q. Okay. And Baker Hostettler has been the law firm  
6 that has represented Lordstown through all of the Central  
7 District of California lawsuit, is that correct.

8 A. Correct.

9 Q. And is it anticipated that they will be, or will  
10 White & Case move forward? Is that something that you know at  
11 this time?

12 A. I don't know.

13 Q. If White & Case were proceeding to defend  
14 Lordstown, they have to get up to speed on the whole case,  
15 including the three years of extent litigation; is that right?

16 A. I don't know to what extent they're already up to  
17 speed, given that it's an integral part of these cases.

18 Q. Is the 6.2 million, including reviewing the 50  
19 depositions and the multiple 500 ECF notices, do you know to  
20 what extent they've already gotten involved in getting up to  
21 speed on three years of litigation?

22 A. I don't know.

23 Q. The debtors currently only have produced 65  
24 vehicles; is that right?

25 A. Closer to eight.

1 Q. According to your declaration, first-day  
2 declaration, you state page 2, paragraph 1. As of the  
3 petition date, the company is in its nascent stages, and only  
4 approximately 65 Endurance vehicles have been manufactured,  
5 correct?

6 A. Yeah, that was as of the petition date, we  
7 continued to build vehicles through the end of, I believe it's  
8 about 20 that have been completed since that time.

9 Q. Have they been sold?

10 A. No, we've sold 37.

11 THE COURT: Let him answer. Finish the answer.  
12 What was your answer, Mr. Kroll?

13 MR. KROLL: We have sold 37 vehicles.

14 BY MR. COLEMAN:

15 Q. And has the company finished finalizing this  
16 limited number of additional vehicles, or are there still more  
17 to be manufactured?

18 A. We're done manufacturing. There are several  
19 vehicles that are incomplete. They're not yet saleable due to  
20 shortage of parts.

21 Q. And once that process is complete, Lordstown  
22 intends to halt production of the Endurance, correct?

23 A. We have already halted those final sort of  
24 incomplete vehicles at this time, we don't - we haven't made a  
25 final conclusion that they would be done on site if

1 (inaudible).

2 Q. So debtors have proposed a sale process that would  
3 conclude with a sale hearing on or about September 12th. Is  
4 that your understanding?

5 A. Yes, sir.

6 Q. And you understand that the Karma litigation is  
7 currently scheduled on trial if the stay is lifted for  
8 September 5th, correct?

9 A. Yes, sir.

10 Q. So either way, management anticipates being in  
11 litigation through that period of time, correct?

12 A. I'm not sure I know what you mean.

13 Q. Well, you represent that the process will be  
14 resource intensive, either for the selling of the assets, the  
15 sale process, or litigation. So, either way, you've got a  
16 resource intensive litigation process to go through in early  
17 September. Is that correct?

18 A. I'm not sure I'm understanding the either/or that  
19 you're referencing. This whole process, in general, is  
20 incredibly resource intensive, whether it's litigation and  
21 bankruptcy. Bankruptcy without litigation.

22 Q. Mr. Kroll, the debtors intend to sell substantially  
23 all of its assets, all of Lordstown's assets, as part of the  
24 bankruptcy process; is that correct?

25 A. Yes.

1 Q. And that includes intellectual property associated  
2 with the development of the Endurance vehicle?

3 A. Yes.

4 Q. That is, in fact, the primary asset that debtors  
5 have remaining, is that correct, the intellectual property  
6 associated with the manufacture and development of the  
7 Endurance?

8 A. I don't know that I would say primary. I mean,  
9 what consists of a vehicle is a full spectrum. Right? We've  
10 invested \$200 million in tooling, and we've spent a lot of  
11 money on the battery line and the motor line. So those are  
12 manufacturing assets. Those manufacturing assets go into  
13 building a vehicle. The vehicle is a design or an  
14 architecture or platform. All of that goes together.

15 So you have physical assets, you have design of the  
16 vehicle. You have the fact it is certified, which is an  
17 important distinction from, say, a prototype. So there's a  
18 spectrum as to what's defined as (inaudible).

19 Q. A substantial portion of the assets that Lordstown  
20 is looking to sell as part of this bankruptcy process is the  
21 intellectual property rights associated with the development,  
22 manufacture of the Endurance vehicle. Is that correct?

23 A. Yeah, that's a fair statement.

24 Q. And those intellectual property rights are  
25 currently being disputed as to who owns them as part of the

1 Karma litigation. Is that correct?

2 A. Well, you'd have to get to the technicalities of  
3 what Karma is claiming they own versus what has been developed  
4 by the company, for example. But the motor technology, we  
5 licensed that from (inaudible).

6 Q. You understand that - excuse me. Go ahead.

7 A. Would be part of (inaudible), so.

8 Q. You understand that some of the intellectual  
9 property rights that the debtors are seeking to sell as part  
10 of this Chapter 11 bankruptcy include intellectual property  
11 rights that are being disputed by Karma as belonging to them,  
12 as being trade secrets that were misappropriated, that went  
13 into the manufacture and development of the endurance vehicle,  
14 correct?

15 A. Yes, I understand that's (inaudible).

16 Q. And as of the date of the petition, the company has  
17 not received any actual and indications of interest in the  
18 purchase of the company; is that correct?

19 A. As of petition date, that's right.

20 Q. And since then?

21 A. Since then we've launched a full process. By the  
22 way, I think it's an important distinction when you draw on  
23 we've not received any actionable offers to buy the company  
24 leading up to the petition date, we were precluded under the  
25 investment agreement with Foxconn from seeking buyers. So we



1 could not in any way solicit a buyer leading up to the  
2 petition day. Since the petition date, we have organized the  
3 business to be marketed (inaudible) absolutely, and we are  
4 (inaudible).

5 THE COURT: Excuse me, Mr. Kroll, I'm having real  
6 difficulty. You keep breaking in and out, so I'm going to  
7 suggest that you disconnect and reconnect unless you have a  
8 different suggestion. I can't hear you at all now.

9 MR. KROLL: Let me -

10 THE COURT: Now, I can.

11 MR. KROLL: Okay. Is that better? I'm so sorry.

12 THE COURT: That's better. Let's try that. Okay.  
13 Sorry to interrupt. You were saying, since bankruptcy we have  
14 -

15 MR. KROLL: We've started a sale process, as we've  
16 discussed, so that meant kicking off all the organization  
17 associated with preparing to market the company.

18 Q. And as of today, there are no offers to purchase  
19 the company. Is that correct?

20 A. Correct.

21 MR. COLEMAN: Your Honor. Thank you. I don't have  
22 any other questions at this time.

23 THE COURT: Any redirect by the debtor?

24 MR. ZAKIA: Yes, Your Honor. Just briefly. Thank  
25 you.

1 REDIRECT EXAMINATION

2 BY MR. ZAKIA:

3 Q. Mr. Kroll, let's start at the end. Counsel just  
4 asked you, as of today, do you have any offers, is there a  
5 process in place to solicit offers for the company?

6 A. Yes, absolutely.

7 Q. Okay. And what is the timeline under which the  
8 debtors have proposed receiving such offers?

9 A. We've told bidders that bids are due next week on  
10 July 31st.

11 Q. So is it in any way surprising that the bidders  
12 have not yet received such a bid?

13 A. No, not at all.

14 Q. I want to clarify something. Counsel asked you  
15 about whether as of today the debtors have ceased their  
16 manufacturing operations. Do you recall that testimony?

17 A. Yes. Yes.

18 Q. Could you explain to the Court, given the fact that  
19 manufacturing has ceased, why the debtors still need to employ  
20 some of the engineering and other technical employees that  
21 they still have on payroll?

22 A. Yeah, I think it goes to the point I was making of  
23 what you're selling. If, you know, we are selling a vehicle  
24 that is complex in nature, a buyer is going to expect to  
25 understand all the componentry, how they fit together. You

1 can't sell a vehicle as a finished puzzle and not explain to  
2 anyone how to put the puzzle together. And it's these  
3 discrete engineers who have unique talent in their own systems  
4 and subsystems that would be required to explain. You know, a  
5 car isn't just four wheels, and off you go.

6 Q. And, Joe, could you please explain to Judge Walrath  
7 what the impact, if any, on the sale process would be if those  
8 employees were to leave the company?

9 A. It'd be significant because you employ all these  
10 specifically trained engineers in their -- with their domain  
11 expertise. And so you can't -- it's not like accounting. I  
12 could just find another accountant to explain how a journal  
13 entry is done. You need a specific engineer who understands  
14 how the body works, how the tooling works, how the tooling was  
15 designed for the body structure, why the body structure is  
16 designed that way, why the folds in the metal are the way they  
17 are to maximize efficiency. And all of the history and trials  
18 that the company's gone through in the prototype phase, you  
19 learn a tremendous amount.

20 I mean, a lot of what is building a vehicle in prototype  
21 phases is exactly what prototype stands for. Right? You're  
22 testing and learning from what you've tried. And so you have  
23 to be able to articulate why things are the way they are  
24 today, but also the history of how you got here, what you  
25 tried that worked, what didn't, and so forth. And it's not a

1 fungible skill set. I mean, history is important, is  
2 critically important, as is just the domain expertise.

3 Q. And could you please explain to the court how, if  
4 at all, an extension of the sale process timeline would impact  
5 the company's ability to retain those employees?

6 A. Yeah, I mean, we've been losing people over the  
7 course of the year because they're uncertain about their  
8 future. And so if you delay the sale process, you're not  
9 likely to get someone to show up from a bid perspective  
10 because they don't know if they can buy the company.

11 So buyers will step back and say, well, unless I have a  
12 timeline, I am not going to put forth my own resources towards  
13 pursuing purchase. So they back away. Then we don't have  
14 anyone step up and say, I like what you have. I'm interested  
15 in it. And if you don't give our employees a place to look  
16 forward to, then why stick around? And so we will absolutely  
17 lose people if we don't give them a reason to be here in an  
18 optimistic future with the buyer.

19 Q. One last topic. You testified that the estimates  
20 of the bankruptcy fees did not yet include fees associated  
21 with the Creditors Committee.

22 A. That's right.

23 Q. Okay. The \$2.5 million estimate that you gave in  
24 your declaration that counsel asked you about or the estimate  
25 of if the stay is lifted taking the Karma litigation to trial,

1 did that estimate include any costs associated with the  
2 possibility that the Creditors Committee could intervene in  
3 the Karma litigation if the stay is lifted?

4 A. No. And then, just to be clear, the \$2.5 million  
5 estimate of cost that would be necessary to litigate the Karma  
6 case, that is in addition to the \$6.2 million burn rate you  
7 talked about, correct?

8 A. Correct.

9 Q. Thank you.

10 MR. ZAKIA: No further questions, Your Honor.

11 THE COURT: All right, thank you. Anybody else  
12 wish to cross examine Mr. Kroll?

13 MR. COLEMAN: Your Honor, if I might have a brief  
14 redirect, if that's permitted at this stage. If not, or a  
15 recross, if not --

16 THE COURT: That's fine, Mr. Coleman, you may.

17 MR. COLEMAN: Thank you.

18 RECROSS-EXAMINATION

19 BY MR. COLEMAN:

20 Q. Just a couple of questions, Mr. Kroll. You  
21 mentioned Lordstown's need to maintain discrete engineers that  
22 are needed to explain the vehicle, correct?

23 A. Yes.

24 Q. And they need to explain the technology of the  
25 vehicle to potential buyers, how it works, the intricacies of

1 the technology associated with it; is that right?

2 A. Correct.

3 Q. Would that include the Infotainment system of the

4 A. Yes, it includes all -

5 Q. One of those engineers would be Joe Durie

6 (phonetic), correct?

7 A. Correct.

8 Q. He was a defendant in the Karma case, correct?

9 A. Yes.

10 Q. And a number of those discrete engineers are folks  
11 that he solicited and brought over with him. In fact, half  
12 the Infotainment division is former Karma employees that he  
13 solicited while he was working at Lordstown and Karma at the  
14 same time. Isn't that correct?

15 A. I wasn't here - I wasn't at the company at the  
16 time. I can't speak to what Joe did or didn't do.

17 Q. You understand those are the allegations in the  
18 Karma case, correct?

19 A. I believe so, yes.

20 Q. And Joe Durie has testified that half of his  
21 Infotainment division are former Karma employees?

22 MR. ZAKIA: Objection, Your Honor. I don't think  
23 it's appropriate to ask this witness about the testimony that  
24 another witness gave in another percent.

25 THE COURT: Yeah, I don't think it's necessary to

1 get into that.

2 MR. COLEMAN: Yes, Your Honor.

3 BY MR. COLEMAN:

4 Q. You would agree, Mr. Kroll, that Lordstown can't  
5 sell intellectual property it doesn't own, correct?

6 MR. ZAKIA: Objection, Your Honor. That is not  
7 appropriate to ask this witness for a legal conclusion.

8 THE COURT: Sustained.

9 MR. COLEMAN: Thank you, Honor. No further  
10 questions.

11 MR. ZAKIA: I have nothing further, Your Honor.

12 THE COURT: All right. Thank you, Mr. Kroll. You  
13 may be excused.

14 MR. KROLL: Thank you, Your Honor.

15 MR. ZAKIA: Your Honor, the debtors' second  
16 witness is Jeffrey Finger from Jeffries. Mr. Finger submitted  
17 a declaration which is found at docket number 157. Mr. Finger  
18 should be on the Zoom and is available for cross-examination,  
19 and we would offer his declaration at this time.

20 THE COURT: All right, well, let's get Mr. Finger  
21 up so he can be sworn. There he is. All right, I'll have him  
22 sworn.

23 THE CLERK: Mr. Finger, please raise your right  
24 hand. Do you affirm that you will tell the truth, the whole  
25 truth, and nothing but the truth, to the best of your

1 knowledge and ability?

2 MR. FINGER: I do.

3 THE COURT: Please state your full name and spell  
4 your last name for the record.

5 MR. FINGER: Jeffrey Finger. F-I-N-G-E-R.

6 THE CLERK: Thank you.

7 THE COURT: All right. Again, Mr. Finger, are the  
8 statements made in the declaration referenced by counsel for  
9 the debtor true and correct to the best of your knowledge, and  
10 do you want to amend any of them?

11 MR. FINGER: They are true and correct, and I will  
12 not amend them.

13 THE COURT: All right, then you're subject to  
14 cross. Mr. Coleman?

15 MR. SOWKA: James Sowka on behalf of Karma  
16 Automotive. This cross examination will be handled by our co-  
17 counsel, Mr. Chipman.

18 THE COURT: All right. Mr. Chipman.

19 MR. CHIPMAN: Good morning, Your Honor. William  
20 Chipman, on behalf of Karma Automotive. Can Your Honor hear  
21 me?

22 THE COURT: I can.

23 MR. CHIPMAN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. CHIPMAN:



1 Q. Good morning, Mr. Finger. My name is Jim Chipman.  
2 I also represent Karma Automotive, and I'm going to ask a few  
3 questions. Mr. Finger, you're the managing director and co-  
4 head of US debt advisory and restructuring in Jeffries,  
5 correct?

6 A. Yes, that's correct.

7 Q. And you've been involved in financial restructuring  
8 for over 20 years, correct?

9 A. That is correct.

10 Q. And you submitted declarations in support of the  
11 debtors' bidding procedures motion and estimation motion,  
12 right.

13 A. In support of the bidding procedures. I believe  
14 that is correct.

15 Q. And you were engaged by the debtors in September  
16 2021 to explore restructuring alternatives, correct?

17 A. No, not exactly.

18 Q. Your retention declaration, would it surprise you  
19 to learn that your retention declaration said that you were  
20 engaged by the debtors in September 2021 to explore  
21 restructuring alternatives for the debtor?

22 A. So I was not a part of the team. Yes, Jeffries was  
23 engaged in September 2021 to explore alternatives.

24 Q. So, Jeffries -- to correct the record, Jeffries was  
25 engaged in 2021?

1 A. Yes, that is correct.

2 Q. All right. And that engagement included marketing  
3 the debtors' assets for sale, correct?

4 A. That is not my understanding.

5 Q. Would it surprise you to learn that your retention  
6 declaration said that Jeffries was obtained to consider  
7 restructuring alternatives, including a sale of the debtors'  
8 assets?

9 A. If I may clarify my understanding of what our  
10 engagement was at that time?

11 Q. Absolutely.

12 A. It was to market the company to seek potential  
13 partners, partnerships, and investment interest in a minority  
14 in the company. It was not an outright sale of the company.

15 Q. So there was some marketing of the debtors to  
16 potential investors and to potential purchasers or other folks  
17 that may want to invest in the company. Correct?

18 A. Correct. With a slight clarification, if you don't  
19 mind. Yes. It was marketed to third parties interested in  
20 making an investment in or partnering with the company.

21 Q. And that process began two years ago. Correct?

22 A. Believe that, roughly speaking, based on the  
23 calendar, I think that's right.

24 Q. And during that time, Jefferies was unable to find  
25 a buyer or investor for the company.

1           A.     Jeffries was unable to find an actionable third  
2 party with which to transact.

3           Q.     Given the amount of time spent working with the  
4 debtors, you are familiar with the debtors' corporate and  
5 capital structure, management, business operations, and  
6 assets, correct?

7           A.     Yes, I would say Jeffries and our team, broadly  
8 speaking, the answer to that is yes.

9           Q.     Okay. As part of your services to the debtors in  
10 these cases, you are continuing to provide advice and  
11 assistance in connection with a possible sale of all or  
12 substantially all the debtors' assets, correct?

13          A.     Correct.

14          Q.     Okay. And your monthly fee in this case is  
15 \$200,000, correct?

16          A.     That is correct.

17          Q.     All right. And you're entitled to a transaction  
18 fee of \$3 million, less a credit of up to five monthly fees  
19 upon the consummation of a sale transaction involving all or  
20 substantially all of the debtors' assets, correct?

21          A.     I believe that was in the original retention  
22 application. It has since been modified, and the crediting  
23 has been increased as negotiated with the Unsecured Creditors  
24 Committee.

25          Q.     Okay. What is that credit now?

1           A.    I believe it is a full credit of the monthly full  
2 credit.

3           Q.    Okay. Thank you for that clarification. Isn't it  
4 true that, however, that Jefferies will not earn any sale  
5 transaction fees for de minimis asset sales or any other sales  
6 that are not for all or substantially all the debtors' assets?

7           A.    My understanding is it is correct in respect to de  
8 minimis asset sales.

9           Q.    Would it surprise you to learn that your retention  
10 application also said that you would not earn the fee if you  
11 don't sell substantially all of the debtors' assets?

12          A.    Believe it is substantially all of the debtors'  
13 assets in one or more transactions, but I understand what the  
14 language says.

15          Q.    Okay. You understand that the debtor manufactures  
16 or manufactured electric vehicles, correct?

17          A.    Yes.

18          Q.    And given Jeffries' two years of experience working  
19 with the debtors and marketing their assets or marketing the  
20 companies for investment, you are very familiar with the  
21 debtors' assets?

22          A.    Yes. Jeffries as an institution, it may not  
23 surprise you. Of course, I have a large team working with me,  
24 including industry specialists.

25          Q.    Understand. Thank you for that clarification. So

1 either you or your team have a clear understanding of the  
2 assets that are being marketed for sale, correct?

3 A. I'd say they have a very good understanding.

4 Q. Okay, and you would agree with me that in your  
5 experience, a debtor can only sell assets that it owns,  
6 correct.

7 MR. ZAKIA: Your Honor, same objections to the  
8 extent he's calling for a legal conclusion, Your Honor.

9 MR. CHIPMAN: I'm not calling for a legal  
10 conclusion. I'm just asking if the witness understands  
11 whether or not he can sell assets that belong to the estate.

12 THE COURT: All right, I'll let him answer that  
13 question. Go ahead.

14 A. Apologies, Your Honor. We are selling all of the  
15 available assets of the debtors'.

16 Q. Selling all the available assets of the debtors  
17 that belong to the debtors, correct?

18 A. Believe that is correct, and I believe that would  
19 be determined by the Court if there happens to be a dispute.

20 Q. Do you believe generally that somebody can sell  
21 assets that don't belong to somebody?

22 MR. ZAKIA: Objection, Your Honor.

23 THE COURT: Yes. Sustained.

24 BY MR. CHIPMAN:

25 Q. Turning to the dispute between Karma and the

1 debtors. You're familiar with the dispute between Karma and  
2 the debtors over the misappropriation of Karma's intellectual  
3 property, correct?

4 A. Yes, I'm generally familiar.

5 Q. Okay. You're aware that the dispute is set for  
6 trial in September, correct?

7 A. I believe that is the case.

8 Q. Okay. And given your familiarity with debtors'  
9 assets, you have a clear understanding which assets Karma  
10 asserts contain its source code and other intellectual  
11 property, correct?

12 A. I would say that I am not close enough to  
13 understand what is black or what is white, but I have read  
14 what the assertions are.

15 Q. Are you're generally familiar about what property  
16 asserts, source code, and other intellectual property.

17 A. Generally.

18 Q. Can you please, to the best of your ability,  
19 identify for the Court the assets that Jeffries is marketing  
20 for sale that contain the intellectual property that is in  
21 dispute in the Karma litigation.

22 A. I cannot specifically list out the assets. I  
23 understand it pertains to the input payment, as was noted  
24 earlier.

25 Q. Okay. And is Jeffries currently marketing those

1 assets for sale?

2 A. We are marketing all of the debtors' assets for  
3 sale. So explicitly as part of that, perhaps those assets  
4 would be included.

5 Q. And these are substantial assets, correct?

6 MR. ZAKIA: Objection. I don't know how the  
7 witness could understand that question.

8 THE COURT: Yes. Sustained.

9 BY MR. CHIPMAN:

10 Q. You understand what the Infotainment system in the  
11 vehicle is, correct?

12 A. Generally speaking.

13 Q. And is the Infotainment system a part of the assets  
14 that are currently being sold?

15 A. As I stated earlier, we're marketing all of the  
16 debtors' assets. And so if somebody is purchasing the  
17 business excuse me, the Endurance platform to produce a going  
18 concern, vehicle and operation, then I suppose Infotainment  
19 would be included.

20 Q. Is the Infotainment system a major component of the  
21 electric vehicle that is being sold?

22 A. It's a component of the vehicle being sold. I am  
23 not a specialist to say if it is major or minor.

24 Q. Do you know whether or not you're marketing the  
25 power moding, bills of materials, electrical architecture as

1 part of the sale as well?

2 A. I understand, I believe, what some of those items  
3 are. But as I stated earlier, my colleagues and I are  
4 marketing all of the debtors' assets.

5 Q. Is it correct to say that the Karma dispute over  
6 the ownership of the intellectual property has made it more  
7 difficult to sell these assets?

8 A. To date, I would say the answer to that question is  
9 no.

10 Q. So the dispute with Karma over whether or not the  
11 debtors own certain intellectual property has not made it more  
12 difficult to sell these assets. That's your testimony?

13 A. That is correct. In our discussions with  
14 prospective buyers and purchasers, it has not been apparent.

15 Q. In your extensive experience as an investment  
16 banker, do you agree with me that it's difficult to sell  
17 assets where there's a dispute as to who owns those assets?

18 A. I would say it is possible that that could create  
19 an obstacle to selling assets that are subject to dispute.

20 Q. If the assets that contain -- if assets contain  
21 intellectual property, if it's determined that assets contain  
22 intellectual property not owned by the debtors and those  
23 assets cannot be sold, that would limit the assets available  
24 for sale, right?

25 MR. ZAKIA: Objection, Your Honor. I object to the



1 legal hypothetical.

2 THE COURT: I'll allow the answer. Can you answer  
3 that?

4 A. Sure. Thank you, Your Honor. Mr. Chipman, would  
5 you mind repeating the question for me?

6 Q. Sure, I'll try and repeat it. If the assets that  
7 you're selling contain intellectual property not owned by the  
8 debtors, and it is determined that it cannot be sold by a  
9 court, by Judge Walrath or another court, that would limit the  
10 available assets for sale. Correct?

11 A. I believe what you were stating makes sense in the  
12 sense that, by definition, if there is an asset that is  
13 determined to be not the debtors' assets or they're not  
14 permitted to sell, that would create an obstacle to the  
15 process, yes. I would also suppose that if another court were  
16 to address that concern and rule over that, I would look To  
17 Judge Walrath to determine how that would impact us in this  
18 case.

19 Q. Do you understand that Karma has alleged the  
20 debtors have stolen intellectual property related to every  
21 major component of the vehicle being sold?

22 A. I am not close enough to the details of the  
23 litigation to appreciate that. Generally speaking, I  
24 understand, but I'm not close enough to it.

25 Q. So what assets would still be for sale, in your

1 general understanding, if the Karma assets are ultimately  
2 excluded from the sale process?

3 A. I suppose we would need to determine exactly what's  
4 being excluded. I'm not sure I appreciate the question.

5 Q. Would you agree with me that if it turns out Karma  
6 owns all or substantially all of the intellectual property  
7 contained in certain of the debtors assets and the judge rules  
8 they can't be sold, that would impact the sale process in a  
9 negative way, right?

10 A. It likely would. Or excuse me, it likely could,  
11 yes.

12 Q. Would you agree that -- the current litigation with  
13 Karma has placed a cloud on title or has put into question  
14 whether some of the assets may or may not be sold?

15 A. The pending litigation has not been the subject of  
16 discussion with any of our prospective buyers to date.

17 Q. Are you informing buyers that there's a potential  
18 that future litigation between the debtors and Karma will  
19 determine whether or not the buyer can actually buy the assets  
20 you're trying to sell?

21 A. We have not had explicit discussion with buyers to  
22 explain to them the pending litigation.

23 Q. You would agree with me that it would be better for  
24 the sale process overall to have the Karma intellectual  
25 property dispute resolved before marketing the assets,

1 wouldn't you?

2 A. No, in the sense that I would not want to further  
3 delay the process, given some of the risk that Mr. Kroll  
4 outlined moments ago.

5 Q. So your testimony, it's better to have a sale  
6 process where there may be a title dispute than have a sell  
7 process where there's no title dispute because of the ongoing  
8 burn rate of the case.

9 A. What I would say is we are in an unfortunate  
10 situation. We are in the middle of bankruptcy proceedings.  
11 They are contested, they are costly, and we are trying to  
12 maximize the value of these assets for all stakeholders.

13 Word it another way, perhaps, but it is unfortunately  
14 not. And so, therefore, I believe we need to continue the  
15 sale process. Unfortunately, the Karma litigation will need  
16 to proceed in its own course, but we need to continue the sale  
17 process, given the risk to the overall enterprise.

18 Q. And you've been marketing these debtors' assets  
19 since the petition date, correct?

20 A. That is correct.

21 Q. And to date, you haven't been able to find a buyer  
22 willing to submit a stalking horse bid yet?

23 A. Yes, you are correct. We do not have a stalking  
24 horse bid at this moment in time. We continue to work with a  
25 number of interested parties. And as you know, the procedures

1 call for indications next week.

2 Q. And the proposed bidding procedures contemplate a  
3 sale to occur in September, correct.

4 A. Correct.

5 Q. And that's before the property ownership dispute  
6 with Karma is resolved, either through estimation procedure as  
7 proposed by the debtors, or the pending action in California,  
8 correct?

9 A. I understood the pending action in California was  
10 in early September. If my memory is incorrect, I apologize.

11 Q. Right. Let me take a step back. The proposed  
12 bidding procedures contemplate a sale to occur in September,  
13 correct? Right?

14 A. Yes.

15 Q. But that's going to be before the property  
16 ownership dispute with Karma is resolved, either through the  
17 estimation procedure or the pending California, correct.

18 A. I'll defer to counsel on exactly when those will be  
19 addressed.

20 Q. Okay. Your declaration states that the bidding  
21 procedures set forth an appropriate process to test the value  
22 of the debtors' assets within a reasonable time frame,  
23 correct?

24 A. That's correct.

25 Q. But you can't test the value of assets that may not

1 be able to be sold. Correct?

2 A. We're managing a competitive sale process right  
3 now. We have a number of parties conducting diligence. I  
4 think the bid procedures themselves outline the process for  
5 parties to engage in a competitive process and therefore test  
6 the value.

7 Q. Well, but if it's ultimately determined that assets  
8 couldn't be sold, there's no one that could bid for those  
9 assets. Correct?

10 A. If it is determined by the Court that the assets  
11 cannot be sold, that would, of course, impact the process.

12 Q. You further state in your declaration that bidding  
13 procedures and the timelines set forth in the bidding  
14 procedures are tailored to balance the needs to conduct a  
15 fulsome marketing process for the debtors assets against the  
16 costs of an extended Chapter 11 process, correct?

17 A. That's correct.

18 Q. Yet a marketing process where bidders are not  
19 certain what assets can actually be sold is not fulsome, is  
20 it?

21 A. As I understand the question, to date, it continues  
22 to be competitive and parties have not addressed or asked  
23 questions about the concern around the Karma litigation.

24 Q. But you testified just a moment ago that you  
25 haven't alerted the bidders to the Karma litigation and the

1 potential ownership dispute.

2 A. So while it is correct we have not outlined the  
3 details of the Karma litigation to prospective bidders, it's  
4 my experience doing this for a number of years that I would  
5 expect any serious party would be aware of that litigation. I  
6 understand the litigation and the prospects of it has been  
7 outlined in the company's public filings a few years ago, I  
8 believe it was late 2020. Forgive me if that's incorrect.  
9 And of course outlined in the media and details of the court  
10 proceedings as well.

11 Q. The debtors' amended bidding procedures order  
12 provides for a July 31st deadline for indications of interest.  
13 Correct? That's Monday.

14 A. Correct.

15 Q. Okay. The debtors' interests in the intellectual  
16 property won't be decided by Monday, correct?

17 A. I don't believe so. That's correct.

18 Q. Wouldn't it be better for the marketing and sell  
19 process if the debtors' ability to sell its assets were  
20 promptly determined so you and potential buyers knew what was  
21 actually included?

22 A. I apologize. Mr. Chipman, could you repeat the  
23 question? I think it went out for a second.

24 Q. Sorry. Wouldn't it be better for the marketing and  
25 sale process if the debtors' ability to sell assets were

1 promptly determined so you and potential buyers knew what was  
2 included?

3 A. I think if there is a cloud of uncertainty and  
4 concern among buyers, then I suppose, yes, it would be better  
5 to have the answer at the same time as I mentioned, and I  
6 apologize to restate it. It has not yet been voiced the  
7 concern. And so we look forward to finding out what we have  
8 that is actionable.

9 MR. CHIPMAN: Your Honor, may I have a moment to  
10 just check my notes?

11 THE COURT: You may.

12 MR. CHIPMAN: Thank you, Your Honor. That's all  
13 the questions I have at this time. Reserve my right for  
14 recross. Thank you.

15 THE COURT: Any redirect?

16 MR. ZAKIA: Thank you Honor. Just briefly.

17 REDIRECT EXAMINATION

18 BY MR. ZAKIA:

19 Q. Mr. Finger, you touched on this during your cross  
20 examination, but could you please explain to Judge Walrath  
21 what the differences are between the process that Jeffries  
22 undertook prior to the bankruptcy and the current marketing  
23 process you're undertaking now?

24 A. Yes, I can. Thank you. So the prior process, as I  
25 understand it, was a marketing process, as was noted. It was

1 a marketing process which Foxconn, of course, was also aware,  
2 as noted, to find partners to create partnerships for the  
3 company as well as to find potential investors, but not -- and  
4 it was not an outright marketing process to sell the company  
5 and the company's assets.

6 I would also say that at the time, we, of course, were  
7 not in bankruptcy. The dynamics were somewhat different in  
8 terms of the public condition around the company, et cetera.

9 Q. Could you please explain to the Court what -- do  
10 you believe that the differences between the pre-petition  
11 process and the current process could cause there to be a  
12 different result?

13 A. I do. For one, as we just discussed, we are  
14 marketing the company as its assets for sale outright today,  
15 which we were not then. And two, in my experience, oftentimes  
16 a bankruptcy sale process, as unfortunate as that may be,  
17 turns up different types of buyers, different levels of  
18 interest, both in dollar amount and otherwise. And so I think  
19 we have the ability to better find an alternative for the  
20 company now versus before.

21 Q. Thank you. Counsel asked you some questions  
22 concerning what, if anything, you had done to make bidders  
23 aware of the existence of the Karma litigation. And I just  
24 want to make sure we understand. I think you made reference  
25 to disclosure of that in the company's public filings. Could



1 you explain to us what you were referring to?

2 A. Yes, I believe it was a subsequent event, and I'm  
3 just trying to remember exactly when. I think it was in late  
4 2020. That would have been one of the ten queues in late 2020  
5 where a subsequent event summarized, and that was, I believe,  
6 the first disclosure, the Karma litigation. And I think since  
7 then, it's been provided for in the company's public filing.

8 A. And in your experience as an investment banker, do  
9 you have an understanding as to what the standard practice  
10 potential buyers would follow with regard to reviewing 10K's  
11 and 10Q's of a public company they were interested in  
12 acquiring?

13 A. I would expect the buyer would review them. Were I  
14 advising buyer, and I have in the past, I would also review  
15 them.

16 MR. ZAKIA: Thank you. No further questions, Your  
17 Honor.

18 THE COURT: Any recross?

19 MR. CHIPMAN: Your Honor, two quick questions.

20 MS. KOVSKY: If I could just ask you a couple of  
21 questions.

22 THE COURT: All right, Ms. Kovsky, you can go ahead  
23 first.

24 MS. KOVSKY: Appreciate it.

25 RECROSS-EXAMINATION

1 BY MS. KOVSKY:

2 Q. Mr. Finger, thank you for appearing today. I  
3 appreciate your time. You were asked a number of questions  
4 about the Infotainment center that is part of the Endurance  
5 vehicle by Mr. Chipman. Do you recall that?

6 A. I do.

7 Q. Is it your understanding that the Infotainment  
8 center in the vehicle is effectively a commoditized or  
9 productized component of that vehicle?

10 MR. CHIPMAN: Your Honor. Objection. I'm not sure  
11 he's an expert on these issues. He barely knew what the  
12 assets were.

13 THE COURT: Yeah, I'll sustain that objection.

14 BY MS. KOVSKY:

15 Q. Is it your understanding, based on your general  
16 knowledge of the assets that are being sold, that a purchaser  
17 could take all of the assets of debtors, but leave the  
18 Infotainment Center behind?

19 A. I suppose it is possible, yes.

20 Q. So a bidder might come in and bid for assets that  
21 don't even include the Infotainment Center. Is that your  
22 understanding?

23 A. That's correct. Each bidder will have its own view  
24 of how to purchase a business.

25 Q. You were asked a number of questions by Mr. Chipman

1 about whether it would be better for the sale process if  
2 Karma's disputed issues were decided first. Do you remember  
3 those questions?

4 A. Yeah.

5 Q. And I believe Mr. Chipman asked you whether it  
6 would be better to have a sale process with a title dispute or  
7 a sales process without a title dispute. Is it your  
8 understanding that there would be a realistic possibility of a  
9 going concern sale process if the Karma dispute were not fully  
10 and finally decided for six months?

11 A. We continue to have interest, and I suppose in  
12 order to confirm a sale, it will have to be Court-approved.  
13 And I think this Court will be that which determines that.

14 Q. Let me clarify my question. Is it your  
15 understanding that - I believe you testified you understood  
16 that the Karma dispute was set for trial in the district court  
17 in California for September; is that right?

18 A. Correct.

19 Q. But that's just the beginning of trial. Correct?  
20 Is it your understanding that in litigation there's often  
21 post-trial briefing that occurs?

22 A. Yes.

23 Q. Is it your understanding that sometimes after a  
24 judgment is entered, there's an appeal?

25 A. Yes.

1 Q. If the entire process to fully and finally  
2 determine Karma's disputed claims takes six months to a year  
3 or more, at that point, would we still be able to come back,  
4 in your opinion, had done this for a while, would we still be  
5 able to come back and have a going concern sale here in the  
6 bankruptcy a year from now?

7 A. No, I believe that is an extensive delay

8 Q. Mr. Chipman asked you some questions about whether  
9 there's a stalking horse bidder in this process. In your  
10 experience as an investment banker, have you ever successfully  
11 concluded a Section 363 sale without a stalking horse bidder?

12 A. Yes.

13 MS. KOVSKY: Thank you. Nobody further questions.

14 THE COURT: All right, Mr. Chipman, any recross?

15 MR. CHIPMAN: Yes, Your Honor, a few quick  
16 questions based upon redirect.

17 RECROSS-EXAMINATION

18 BY MR. CHIPMAN:

19 Q. Mr. Finger, your testimony is that the buyers need  
20 to go to the SEC filings to learn of the Karma litigation. Is  
21 that correct?

22 A. I believe they would be aware of it via the SEC  
23 filings, as well as other media outlets and this Court's  
24 docket.

25 Q. But your testimony was that you have not explained

1 to potential bidders the scope of the Carmel litigation,  
2 correct?

3 A. Correct.

4 Q. A few more questions. Are the potential bidders  
5 aware that the property rights dispute between Karma and the  
6 debtors may not be resolved within the sale timeline proposed  
7 by the debtors?

8 MS. KOVSKY: Objection, Your Honor. The witness  
9 can't testify to what other parties might be aware of.

10 THE COURT: Sustained.

11 BY MR. CHIPMAN:

12 Q. Are you aware that the disputed intellectual  
13 property goes well beyond the Infotainment system, Mr. Finger?

14 A. I believe that is Karma's assertion.

15 Q. Sorry, could you repeat that? I couldn't hear you.

16 A. I believe that is what Karma asserts, but I can't  
17 opine.

18 Q. And the Infotainment system is just one of the many  
19 components fully integrated into the vehicle, correct?

20 MS. KOVSKY: Objection, Your Honor, the witness is  
21 not an expert, as Mr. Chipman already stated on the  
22 intricacies of the vehicle.

23 THE COURT: Sustained.

24 BY MR. CHIPMAN:

25 Q. And sitting here today, Mr. Finger, you don't have

1 any idea how long it can take for the bankruptcy court to  
2 resolve the intellectual property dispute, correct?

3 A. I don't believe it's my expertise to determine how  
4 long that should take.

5 MR. CHIPMAN: Thank you, Your Honor. No more  
6 questions. Thank you.

7 THE COURT: Thank you. Anything further for Mr.  
8 Finger?

9 MR. ZAKIA: Not from us, Your Honor.

10 THE COURT: All right. Thank you, Mr. Finger.  
11 You may be excused.

12 MR. ZAKIA: Your Honor, So that completes the  
13 debtors' evidentiary presentation with respect to the three  
14 motions. The debtors rest.

15 THE COURT: The committee has no witness, I  
16 assume?

17 MS. KOVSKY: Correct, Your Honor.

18 THE COURT: All right, then I'll look to Karma to  
19 see if they want to present their witness.

20 MR. SOWKA: Yes, Your Honor. James Sowka, on  
21 behalf of Karma Automotive. Karma offers Mr. Wexler as a fact  
22 witness in this case. He proffered a declaration found at  
23 docket number 83 with respect to the lift stay motion. We  
24 would also seek to proffer additional testimony beyond that  
25 declaration relevant to the other two disputed matters here

1 today.

2 MR. ZAKIA: Your Honor, if I could be heard.

3 THE COURT: Yes.

4 MR. ZAKIA: This is Jason Zakia. Thank you, Your  
5 Honor. So we do not have a problem with the process of using  
6 declarations for direct. That's not the nature of the  
7 objection. However, this particular witness' declaration we'd  
8 like to object to on the grounds that the witness is an  
9 attorney who has no personal knowledge of the matters at issue  
10 in the underlying dispute. And the declaration really  
11 addresses two points.

12 One are certain basic facts concerning things that  
13 have happened in the district court litigation. And as I  
14 think Your Honor will hear from Karma, they intend to offer  
15 documents from the docket which we do not intend to object to.  
16 They can establish those facts.

17 But most of this declaration is really argument of  
18 counsel in the form of testimony. And we object the effort to  
19 have, effectively, an advocate, through evidence, argue and  
20 characterize evidence uncovered in the case. So for example,  
21 paragraphs eight, paragraph nine, paragraph ten, paragraph  
22 eleven, this is really argument which counsel will have the  
23 opportunity to make at the appropriate time as an advocate.  
24 It is not evidence, and therefore we believe the declaration  
25 as a whole should be not admitted.

1 MS. KOVSKY: Your Honor, Deb Kovsky for the  
2 Committee. We join in the objection. We believe that the  
3 declaration is inadmissible hearsay. It's improper opinion  
4 testimony. It basically is trying to usurp the Court to say  
5 what the evidence means without actually putting any real  
6 evidence in front of the Court.

7 We also think it's unnecessary. To the extent  
8 that Karma wants to put on the record what has occurred and  
9 been filed in the district court, of course, the Court can  
10 take judicial notice of another court's docket. And to the  
11 extent there's any concern about that, the Committee is  
12 prepared to stipulate that the docket in the district court is  
13 what it is and the filings say what they say, with the  
14 exception of two exhibits that Karma seeks to offer into  
15 evidence, which, if they do, we'll address at that time simply  
16 because the Committee hasn't had an opportunity to see them.

17 But we do join in the debtors' objection to the  
18 admission of this declaration. We think it's improper.

19 THE COURT: Mr. Sowka, do you want to --

20 MR. SOWKA: Yes, Your Honor. So Mr. Wexler is  
21 offering fact testimony here, Your Honor, to inform the Court  
22 regarding what has happened in the district court litigation,  
23 what remains to be done for the case to go to trial, and what  
24 would be required at trial. This is part of the burden of  
25 proof that Karma has with respect to its motion.



1           And the debtors have argued in their filings that  
2 Karma has failed to put forth any evidence regarding the  
3 three-pronged test. Mr. Wexler's testimony is directly  
4 relevant and probative to the lack of prejudice of the debtors  
5 of lifting the stay. The hardships that Karma would incur if  
6 the Court didn't -- if the stay isn't listed, as well as the  
7 likelihood of success of the merits of the litigation.

8           So we believe it's completely appropriate for Mr.  
9 Wexler to provide a summation to the Court of what has  
10 happened, what remains to be done in the district court so  
11 Your Honor can understand these things, which are directly  
12 relevant to the three-pronged test and the case law in this  
13 circuit and the (inaudible) on lift-stay motions.

14           THE COURT: Well, let's address the prong dealing  
15 with the merits of the underlying action. Mr. Zakia, do you  
16 take the position they have to show they have a substantial  
17 chance of prevailing in the underlying action?

18           MR. ZAKIA: Your Honor, I think, as we acknowledge  
19 in the papers, there is a requirement that a movement seeking  
20 to lift the stay show that they have a reasonable likelihood  
21 of success on the merits. I think there are supports to talk  
22 about that prong being maybe less important than some of the  
23 others.

24           So I don't mean to quibble with Your Honor about  
25 substantial, but to the extent Karma believes they need to

1 prove things related to the merits of the case, it's not  
2 appropriate to do that by having a lawyer come in and say,  
3 here is the evidence that we develop below. Now, if they want  
4 to argue that summary judgment was denied, certain of the  
5 claims, we don't dispute that summary judgment was denied.  
6 And one of the exhibits they want to offer is that opinion of  
7 that court which says what it says. We don't dispute that.

8 But I don't think there's any need for a lawyer to  
9 come give a crossover in the argument as to why the Court did  
10 that or what the evidence in the underlying case showed. I  
11 hope that answers Your Honor's question.

12 THE COURT: It does. Ms. Kovsky, do you want to  
13 chime in on this standard and whether it's met by simply the  
14 fact that the Court has denied, in part, summary judgment for  
15 the defendants in that action? In part, yes.

16 MS. KOVSKY: They don't know what the standard is.  
17 I'm not sure I'm prepared to go so far to say that the mere  
18 denial of summary judgment shows a likelihood of success. It  
19 shows the existence of disputed facts. I would certainly go  
20 that far. But whether or not Karma has an obligation to put  
21 on evidence that the fact remains that this declaration isn't  
22 it. This is argument by an advocate who doesn't have personal  
23 knowledge.

24 If he were sitting on the stand right now instead  
25 of doing this by declaration, everything that he says in

1 paragraphs eight through eleven is inadmissible hearsay. So  
2 trying to get it in through declaration, I don't think they  
3 can skirt the rules of evidence that way.

4 THE COURT: All right, well, let me shortchange  
5 this. I have always taken the position and agreed with courts  
6 that say that that prong of the stay relief burden is a low  
7 bar to meet, and that I conclude that the denial, in part, of  
8 a motion for summary judgment filed by the defendants in the  
9 underlying case is. Sufficient to meet that bar, to show that  
10 there are substantial merits to the underlying case that might  
11 warrant granting relief from the stay.

12 So to the extent that Mr. Wexler was going to  
13 testify as to any of the evidence, I just don't think it's  
14 appropriate in a motion for relief from the stay that the  
15 bankruptcy court has to consider the evidence and rule on  
16 evidence and the sufficiency of evidence to prove a claim. I  
17 think that the bar is substantially less than that. So I've  
18 ruled that the movement has met that bar.

19 So, Mr. Sowka, you want to proceed with either an  
20 examination of Mr. Wexler or a determination of what, in his  
21 declaration, you want to present as to the other two prongs,  
22 or do we want to take a break at this point so you can narrow  
23 your examination?

24 MR. SOWKA: Your Honor, I'm prepared to proceed.  
25 I would suggest let's proceed with the direct examination of

1 Mr. Wexler, and we can handle any objections on a one-off  
2 basis. Given Your Honor's ruling, I don't intend to elicit  
3 testimony regarding the likelihood of success of the merits.  
4 I understand that that's been satisfied based on the  
5 stipulation from debtors, that they acknowledge it. That  
6 summary judgment has been denied in part.

7 THE COURT: All right. Then we can proceed.  
8 First, Mr. Wexler, I'm going to ask the clerk to swear you in.

9 THE CLERK: Mr. Wexler, do you affirm that you  
10 will tell the truth, the whole truth, and nothing but the  
11 truth to the best of your knowledge and ability?

12 MR. WEXLER: I do.

13 THE CLERK: Please state your full name. Spell  
14 your last name for the record.

15 MR. WEXLER: Michael Wexler. W-E-X-L-E-R.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. SOWKA:

19 Q. Mr. Wexler, what is your current profession?

20 A. I am an attorney at Seyfarth Shaw.

21 Q. And where are you licensed to practice law?

22 A. I'm licensed in Illinois and then have various  
23 admissions in federal courts throughout the country.

24 Q. And do you specialize in any particular practice of  
25 law?

1           A.    My primary practice is in trade secrets,  
2 noncompetes, and related topics.

3           Q.    Do you hold any leadership positions with Seyfarth  
4 Shaw?

5           A.    Currently I'm on what's called our Partner Board,  
6 and I am the chair of the trade secret/noncompete group at  
7 Seyfarth nationally.

8           Q.    And how long have you been the chair of the trade  
9 secret/noncompete group at Seyfarth?

10          A.    It's a great question. A number of years. I don't  
11 know the exact number.

12               MR. ZAKIA: Your Honor, I don't want to be  
13 difficult or interrupt, and I'm happy to hear about Mr.  
14 Wexler's background. I'm just hoping that they don't intend  
15 to offer opinion testimony from this witness, since he's a  
16 U.S. lawyer. And Your Honor's the expert is the matters of  
17 U.S. law. So if this is just background, fine. But to the  
18 extent they're headed in the direction of expert testimony, we  
19 would object to that.

20               THE COURT: I don't know where they're heading, so  
21 let's just wait and see.

22 BY MR. SOWKA:

23          Q.    Mr. Wexler, you've heard the testimony today  
24 regarding the litigation between the debtors and Karma in the  
25 California District Court, correct?

1 A. Yes.

2 Q. And you're familiar with that litigation?

3 A. Yes.

4 Q. And what is your familiarity with that litigation  
5 based on?

6 A. It's based on personally involved in litigation,  
7 appearing in court, corresponding with opposing counsel, as  
8 well as our team here, and participating in drafting motions  
9 and participating in contested hearings.

10 Q. And are you familiar with Karma's business.

11 A. As a general matter? Sure.

12 Q. Can you tell us a little bit about what that is?

13 A. They are in the, I'll say, the technology business  
14 of electric vehicle technology, producing vehicles, as well as  
15 converting vehicles, as well as having a business to business  
16 aspect of their operations. They provide technology to other  
17 companies.

18 Q. Thank you. Mr. Wexler, could you please turn to  
19 what's been marked as Karma's Exhibit No. 2 for today's  
20 hearing?

21 A. Sure. Yes, I have that in front of me.

22 Q. Are you familiar with this document?

23 A. This appears to be the first amended complaint that  
24 was filed on behalf of Karma in the Central District of  
25 California against Lordstown and several individual

1 defendants.

2 Q. And were you personally involved with drafting this  
3 amended complaint?

4 A. Yes.

5 Q. Can you please briefly summarize the factual  
6 assertions set forth in this complaint for the Court?

7 A. The short answer is Karma had discussed with  
8 Lordstown about providing technology to Lordstown. Lordstown  
9 then backed out of an agreement to have technology provided to  
10 it.

11 In the interim, Lordstown hired individuals that worked  
12 at Karma, hired them to work at Lordstown, some of those  
13 individuals working at both companies at the same time. And  
14 it was then discovered that certain technology involving  
15 Infotainment, electric architecture, power moding, building  
16 materials, and Karma's process improvement systems, as well as  
17 source code were discovered. They've been taken and placed  
18 within Lordstown's technology.

19 Q. Thank you, Mr. Wexler, can you next please, briefly  
20 summarize the legal causes of action asserted in the  
21 complaint? It's a lengthy document.

22 A. As a general matter, there are federal and state  
23 trade secret claims. There are federal computer fraud claims.  
24 There are conspiracy claims, there's a RICO conspiracy claim,  
25 there is tortious interference claims, there are California

1 penal code claims. I think I said breach of contract already.  
2 Those are generally there's 20 some claims, a few of which  
3 were dismissed in summary judgment, the majority of which were  
4 upheld at summary judgment, and the Lordstown's motion was  
5 denied in most respects.

6 Q. Does the amended complaints include a claim for  
7 injunctive relief?

8 A. There is a claim for permanent injunctive relief in  
9 the amended complaints as well as damage claims.

10 Q. And can you please briefly summarize the defendants  
11 named in the (inaudible)?

12 A. There's Lordstown who's a defendant, and then  
13 individually, there are approximately ten individual  
14 defendants and one individual corporate defendant that are  
15 also defendants in the matter. And other than Lordstown,  
16 these other individuals, they're not in these bankruptcy  
17 proceedings.

18 Q. I'm sorry, you cut out for me in a second. Could  
19 you just explain a little bit the individual defendants'  
20 relationships between the Lordstown and Karma?

21 A. Almost all, except for Mr. Burns, many of these  
22 individuals were former Karma employees who went to Lordstown.  
23 Mr. Burns, he's a former CEO of Lordstown.

24 MR. SOWKA: Your Honor, I would move Karma's  
25 Exhibit No. 2 into the evidence.



1 MR. ZAKIA: Your Honor, my understanding is that  
2 this is being offered to establish simply the claims that were  
3 made and not the truth of the matter asserted. That  
4 limitation, I don't object.

5 THE COURT: Right. It is admitted with that  
6 limitation.

7 BY MR. SOWKA:

8 Q. Mr. Wexler, could you please turn to what's been  
9 marked as Exhibit No. 6 in Karma's exhibit book?

10 A. Yes, I'm there.

11 Q. Are you familiar with this document?

12 A. I am.

13 Q. And what is this document?

14 A. This is the ruling of U.S. District Court Judge  
15 James Selna with regard to motions that were brought for  
16 preliminary injunction and sanctions against Lordstown and  
17 individuals in this matter.

18 Q. And what was the basis for Karma seeking sanctions?

19 A. The basis for sanctions was the destruction or  
20 spoliation of evidence that took place with regard to  
21 Lordstown, Mr. Durie, and Mr. Bond (phonetic), that virtually  
22 upon filing of the lawsuit, there was destruction of numerous  
23 files by the defendant in the matter.

24 Q. And what was the Court's ultimate ruling with  
25 respect to the motion for sanctions brought by Karma?

1 MR. ZAKIA: Your Honor, objection. Sorry.  
2 Objection. Your Honor, the Court order says what it said.  
3 The judge's opinion could be read. I don't think it's  
4 appropriate to have this witness characterize it.

5 THE COURT: I agree. Do you want to admit that  
6 document?

7 MR. SOWKA: Yes, Your Honor, I would like to move  
8 to admit document No. 6 into evidence.

9 MR. ZAKIA: No objection.

10 THE COURT: It is admitted.

11 BY MR. SOWKA:

12 Q. Mr. Wexler, please turn to what's been marked as  
13 Karma's Exhibit No. 7.

14 A. I'm there.

15 Q. And what is this document?

16 A. This is another order of Judge Selna. This is an  
17 order regarding - motion for sanctions.

18 Q. This is the second order for sanctions, correct?

19 A. Correct.

20 Q. And this order is under seal with the district  
21 court; is that correct?

22 A. I believe that's correct.

23 Q. And what was the basis for Karma seeking sanctions  
24 with respect to entry of this order?

25 MR. ZAKIA: Same objection. I believe the order

1 speaks for itself.

2 MS. KOVSKY: (Inaudible) objects because while the  
3 order does, I'm sure, speak for itself, the Committee has not  
4 been given an opportunity to review it. And we object to the  
5 admission of any document that we haven't been able to see.

6 MR. SOWKA: Your Honor, as I previously stated,  
7 this order is under seal with the district court. And we  
8 reviewed the protective order entered in that case and the  
9 procedures, and we found no basis, legal basis, by which we  
10 could release this to nonparties in the litigation. The  
11 debtor has seen it, has no objection to admission of the  
12 order.

13 So we were not able to share it with the Committee  
14 at this point. To the extent that the district court permits  
15 it, at some point in the future, we would be able to share it.  
16 But based on the terms of the order right now, we don't see a  
17 legal basis to do so.

18 MS. KOVSKY: Your Honor, the Committee is a party  
19 in interest here. If Karma wanted to use a document in this  
20 litigation that the Committee is unable to see, it should have  
21 moved the district court for relief from that sealing order.

22 MR. SOWKA: Your Honor, I have to add, as the  
23 parties pointed out earlier, this was entered by the district  
24 court, and the Court can take judicial notice of that fact.

25 THE COURT: Well, I will take judicial notice of

1 the fact that the Court entered an order under seal with  
2 respect to a motion for sanctions. But I think, given the  
3 inability of the Committee to review it, I won't do more than  
4 that.

5 MR. SOWKA: Understood.

6 BY MR. SOWKA:

7 Q. Mr. Wexler, can you describe some of the background  
8 circumstances with respect to entry of the second sanctions  
9 order?

10 MR. ZAKIA: Objection, Your Honor. I don't think  
11 it's appropriate for counsel as (inaudible) to characterize a  
12 Court ruling.

13 MR. SOWKA: Your Honor, he's summarizing the facts  
14 surrounding entry of the order. Your Honor is not taking the  
15 order into evidence, so it doesn't speak for itself. So it's  
16 appropriate for Karma to be able to make a record with respect  
17 to the factual predicate for entry of this order?

18 THE COURT: Well, I think it's going to be  
19 difficult to do that since it's under seal. Is the motion for  
20 sanctions under seal.

21 BY MR. SOWKA:

22 Q. Mr. Wexler? Is the motion for sanctions with  
23 respect to this order under seal?

24 A. I do not believe the motion is under seal. I  
25 believe there may have been some items of evidence that may

1 have been redacted pursuant to protective order, but the  
2 motion itself, I believe, is on the docket.

3 Q. Mr. Wexler, that would permit you to discuss the  
4 portions of the motion that were not redacted?

5 A. Yes, I could describe the basis as to why the  
6 motion - the factual basis as to why the motion was brought  
7 and granted. Should I do that? I'm sorry.

8 THE COURT: I'll allow him to testify to that.

9 MR. WEXLER: In short order here, the motion was  
10 brought against Post and Lordstown with regard to destruction  
11 of evidence by Mr. Post. And in fact, there was a discovery  
12 of files that were deleted, and the Court presented with the  
13 motion for sanctions with regard to that. And the Court  
14 granted, in part, the motion for sanctions because of the  
15 destruction of evidence as alleged in the motion that was -  
16 that was brought.

17 THE COURT: Okay.

18 BY MR. SOWKA:

19 Q. Thank you, Mr. Wexler. Please turn to what's been  
20 marked as Karma of Exhibit No. 8.

21 A. I have that in front of me.

22 Q. Are you familiar with this document?

23 A. I am.

24 Q. And what is this document?

25 A. This is Judge Selna's order on motions in limine

1 that were brought by both sides in the matter by Lordstown and  
2 individual defendants, as well as brought by plaintiff Karma.

3 Q. And could you turn to page seven of this order,  
4 please?

5 A. Yes, I'm there.

6 Q. And do you see the first full paragraph starting  
7 with the word separately?

8 A. Yes, I'm familiar with that.

9 Q. Can you describe a little bit with respect to what  
10 the motion was seeking that is referenced by this paragraph in  
11 the order?

12 MR. ZAKIA: Objection, Your Honor. The order  
13 speaks for itself.

14 MR. SOWKA: Your Honor. The order was entered in  
15 response to Karma's motion. I think it's appropriate for the  
16 Court to understand the relief that was requested in the  
17 motion propounded by Karma in the district court litigation,  
18 especially considering the fact -

19 THE COURT: I'll allow brief sorry discussion of  
20 it.

21 A. Karma brought motions in limine to prohibit  
22 Lordstown and I suppose the individual defendants from putting  
23 into evidence either the documents or witnesses testimony  
24 regarding technology in the Endurance vehicle that had not  
25 been disclosed prior to the close of discovery. There were

1 numerous motions to compel that were brought. Lordstown  
2 stated that it would supplement, and that technology was  
3 developing every day it was changing.

4 A motion was brought to bar them from essentially moving  
5 the ball every day after close of discovery. And the Court  
6 agreed with the motion and granted the motion excluding any  
7 evidence with regard to the Endurance vehicle that wasn't  
8 disclosed prior to the close of discovery.

9 Q. Thank you, Mr. Wexler.

10 MR. SOWKA: Your Honor, Karma moved Exhibit No. 9  
11 into evidence.

12 THE COURT: Exhibit 8? You mean 8?

13 MR. SOWKA: Yes, sir. I'm sorry. Exhibit No. 8.

14 MR. ZAKIA: That's correct.

15 THE COURT: Any objection?

16 MR. ZAKIA: No objection.

17 MS. KOVSKY: No objection.

18 THE COURT: Okay.

19 BY MR. SOWKA:

20 Q. Mr. Wexler, please turn to what's been marked as  
21 Karma's exhibit number nine.

22 A. Yes.

23 Q. And are you familiar with this order?

24 A. I am.

25 Q. And what is this order?

1           A.     This order is an order of Judge Selna along with  
2 his oral ruling. There's a transcript of that with regard to  
3 relief sought by Lordstown and the individual defendants to  
4 substitute in a new expert on damages because of what they  
5 terminal illness of their first expert.

6                   MR. SOWKA: Your Honor, Karma asks that the Court  
7 accept Exhibit No. 9 into evidence.

8                   MR. ZAKIA: No objection?

9                   MS. KOVSKY: No objection.

10                  THE COURT: It's admitted.

11 BY MR. SOWKA:

12           Q.     Okay. Mr. Wexler, please turn to what's been  
13 marked as Exhibit No. 12. Are you familiar with this  
14 document?

15           A.     I am.

16           Q.     And what is this document?

17           A.     This is a final pretrial conference order that was  
18 submitted - I guess I'd say submitted to the Court by both  
19 sides. Order from the submission to the pretrial.

20           Q.     And is it correct that the terms of this order  
21 would govern the scheduled September 5 trial?

22           A.     Yes.

23                   MR. SOWKA: Your Honor, I move that Exhibit No. 12  
24 be accepted into evidence to the Court.

25                   MR. ZAKIA: No objection.



1 MS. KOVSKY: No objection.

2 THE COURT: It's admitted.

3 BY MR. SOWKA:

4 Q. Mr. Wexler, what is the current posture of the  
5 district court litigation post a bankruptcy filing by  
6 Lordstown?

7 A. The case is essentially ready for trial. Each side  
8 has been granted 26.5 hours, or a total of 52 hours to try the  
9 case. The pretrial is done. Obviously, proposed jury  
10 instructions have been exchanged by both sides.

11 The only thing that's left to do is Lordstown asked to  
12 substitute an expert in. And so the Court allowed that under  
13 certain limited conditions, and those conditions were that the  
14 new expert could not go beyond the scope of the prior expert's  
15 report or, I guess, factual underpinnings of the prior report,  
16 could not correct any mistakes, errors, anything like that,  
17 and could not - could not (inaudible) any calculations.

18 The Court then said that the Plaintiff was permitted to  
19 depose that person. That person's name is Pampanella  
20 (phonetic), that we would be permitted to depose that person.  
21 And then also Mr. Kroll, who testified earlier, he would be  
22 permitted to be deposed by plaintiff as well. And that  
23 plaintiff Karma's expert could provide a rebuttal report. And  
24 there was a schedule to do all that. That was stayed when the  
25 bankruptcy was filed. So other than taking those couple of

1 depositions and a report, everything is ready for trial.  
2 Ruled upon. The pretrial has been set, the timing has been  
3 set during, jury instructions been exchanged, everything is  
4 ready to go.

5 And we also specifically asked the Court, are you  
6 vacating September 5th trial date? And the Court said, no,  
7 I'm not. Let's get an understanding of what the stay applies  
8 to and what the bankruptcy court is going to do. So he did  
9 not vacate the trial date for September 5th.

10 Q. And Mr. Wexler, could you briefly describe the  
11 discovery that has taken place in the case to date for the  
12 Court?

13 A. Sure. There have been approximately 12 million  
14 documents exchanged, 54 depositions, I think, and I could be  
15 correct if I missed - if I'm wrong, there's approximately 500  
16 docket items, I believe. There's approximately, if I remember  
17 correctly, 12 to 14 experts, all of which have been deposed  
18 and provided reports and all of that already, all those things  
19 are done. It's been about three years of litigation, and as I  
20 said, millions of documents and numerous experts and numerous  
21 depositions.

22 Q. And Mr. Wexler, you testified earlier the  
23 litigation also involved nonparty individual defendants,  
24 correct?

25 A. That's correct.

1 Q. So if the bankruptcy court denied the motion to  
2 lift the stay and adjudicated the claims between Karma and  
3 Lordstown here, what would happen with respect to Karma's  
4 claims against the individual defendants?

5 A. As far as, I guess, from a jurisdictional court  
6 perspective, there would be no resolution in the bankruptcy  
7 court of the individual defendants' claims. So there's  
8 essentially two proceedings out there. I suppose there's  
9 always a risk of inconsistent verdicts. And there's also the  
10 looming issue of injunctive relief that's been asked for in  
11 the complaint, which I don't believe, If I'm corre't, can be  
12 resolved by the bankruptcy court, would need to be resolved, I  
13 suppose, by Judge Selna. So there's a number of issues that  
14 occur if the stay is not lifted and there's these separate  
15 jurisdictional claims out there.

16 MR. SOWKA: Thank you, Mr. Wexler. No further  
17 questions.

18 THE COURT: Mr. Zakia, do you wish to cross?

19 MR. ZAKIA: Just one question, Your Honor. I'll  
20 start at the end.

21 CROSS-EXAMINATION

22 BY MR. ZAKIA:

23 Q. Mr. Wexler, you don't dispute that Judge Walrath  
24 can determine what is or is not property of the debtors'  
25 bankruptcy estate, do you?

1 MR. SOWKA: Objection, Your Honor. Calls for a  
2 legal conclusion. Mr. Wexler is not a bankruptcy attorney.

3 THE COURT: Sustained.

4 MR. ZAKIA: That makes my cross very short, Your  
5 Honor.

6 MS. KOVSKY: No further questions, Your Honor. I  
7 just have a couple of quick questions, if I may.

8 THE COURT: You may.

9 CROSS-EXAMINATION

10 BY MS. KOVSKY:

11 Q. Mr. Wexler, Deb Kovsky from Troutman Pepper for the  
12 Committee. It talked about this trial in September, correct?

13 A. You broke up in the middle of that, as someone was  
14 typing on a keyboard. Could you just ask that again, please?  
15 I'm sorry.

16 Q. You testified that under the current final trial  
17 conference order, the district court case would be ready for  
18 trial in September, right?

19 A. Yes. Under the current pretrial, as long as those  
20 other couple of depositions took place. Yeah.

21 Q. And that final pretrial conference order does not  
22 take into account the Committee's right to intervene in the  
23 district court case, does it?

24 A. Because the Committee isn't a party to the case,  
25 and it would not take that into account, not to mention if the

1 Committee had to go through 12 million documents and 54  
2 depositions and experts, I don't see how anything could happen  
3 in the bankruptcy court or the federal court in California in  
4 any timely fashion at all with the Committee wanting to try to  
5 intervene.

6 Q. Even if the district court matter went to trial in  
7 September, that doesn't necessarily mean that judgment would  
8 be entered in September, does it?

9 A. I believe that's not correct. The case goes to a  
10 jury. The jury makes a decision. Assuming the jury finds in  
11 plaintiff's favor, awards damages, et cetera, judgment would  
12 likely be entered the moment the jury verdict comes in. So I  
13 don't think that's a correct statement.

14 Q. So in your experience as a trial lawyer, judgment  
15 is automatically entered the moment a jury verdict comes in?

16 A. In my experience, many judges will enter judgment  
17 on a jury's verdict when it's issued. There may be post-trial  
18 motions, and there may be an amended judgment, or there may be  
19 post-trial proceedings with regard to, for example, attorneys'  
20 fees in which there'd be a further judgment. But many times  
21 I've seen a jury verdict, the judgment's entered on that  
22 verdict when the verdict comes in.

23 Q. But you have no knowledge as to whether this judge  
24 would do that?

25 A. I could not speculate on what the judge would or

1 would not do at that moment in time.

2 Q. And you mentioned post-trial briefing motion  
3 practice, so that could further delay a final judgment in the  
4 case, correct?

5 A. Well, it wouldn't delay judgment that was entered  
6 on a jury verdict. It may delay further judgment proceedings.  
7 And I'm not a bankruptcy attorney, but I suppose the same  
8 thing happens in the bankruptcy court if there's a  
9 disagreement over what happens in an adversarial proceeding,  
10 for example. And if there's disagreement on that, my  
11 understanding is that we appealed to the district court and  
12 then to the appellate court after that. So it's even a longer  
13 proceeding, as I understand, in bankruptcy, if a contested  
14 matter is taken in further post-trial proceedings than it  
15 would in a straight litigation in federal court elsewhere.

16 Q. And there's, of course, the possibility of appeal  
17 in the district court case as well, isn't there?

18 A. I think there's a possibility of appeal in  
19 bankruptcy court as well as the district court, yes.

20 MS. KOVSKY: Your Honor, I have no further  
21 questions.

22 THE COURT: Any redirect?

23 MR. SOWKA: No, Your Honor.

24 MR. ZAKIA: No. Thank you.

25 THE COURT: Thank you, Mr. Wexler.

1 MR. WEXLER: Thank you for your time, Your Honor.

2 THE COURT: All right. I'm going to suggest we  
3 take a ten-minute break, and then I'll hear arguments. We  
4 have no more witnesses, correct?

5 MR. ZAKIA: Correct, Your Honor.

6 MR. SOWKA: Correct, Your Honor.

7 THE COURT: All right, let's take a break and  
8 we'll come back for argument.

9 MR. ZAKIA: Okay. Yeah.

10 (Recess taken at 11:16 a.m.)

11 (Proceedings resumed at 11:25 a.m.)

12 THE COURT: All right. We're back on the record.  
13 This is Judge Walrath.

14 I will hear arguments on the combined motions.

15 MR. TURETSKY: Good morning, again, Your Honor.  
16 David Turetsky of White & Case on behalf of the debtors. I  
17 think what we will do is we will just go in the order of  
18 bidding procedures first, followed by the motion to lift stay  
19 and estimation if that works for Your Honor.

20 Does that work or are you still thinking about it,  
21 Your Honor?

22 THE COURT: Well, we can go in that order.

23 MR. TURETSKY: So, that does take us to No. 18,  
24 which is the debtor's motion for an order approving bid  
25 procedures and certain related relief. As we discussed with

1 the Court, one of the objectives here is to appropriately and  
2 expeditiously market and, hopefully, sell all or some of the  
3 debtor's assets. The debtors will, of course, consider all  
4 bids, but there is a view, as there often is in these cases,  
5 that if we can achieve a going concern sale that could be a  
6 value maximizing outcome, but we need to move quickly.

7           There is a lack of revenue coming in. We need to  
8 try and minimize the cash burn associated with the operation.  
9 There are also some challenges associated with keeping  
10 employees who may be critical to the sale of the business as a  
11 going concern. So, time is not a friend of the sale process  
12 here and that is why we filed the bidding procedures, at  
13 Docket No. 16, on the first day of the case.

14           The motion and bidding procedures are designed to  
15 support an immediate marketing of the debtor's assets on a  
16 timeline of getting to a sale hearing by mid-September.  
17 Following the filing of the motion we did receive informal  
18 comments from the U.S. Trustee, the committee, and Cigna.  
19 Language has been incorporated into the revised proposed order  
20 that was filed at Docket No. 159 along with a redline to the  
21 original proposed bidding procedures that had been filed.

22           Like the original order that we submitted, the  
23 proposed order establishes customary and reasonable bidding  
24 procedures that were in the debtor's marketing and sale  
25 process and continues to envision getting to a sale hearing in



1 September. To be clear, the bid procedures does not approve -  
2 - the order does not approve any sale to decide anyone's  
3 property rights with respect to any assets or determine  
4 (indiscernible) those rights. Those are issues for another  
5 day.

6           Nonetheless, we did receive an objection from Karma  
7 which was filed at Docket No. 127. In its objection Karma  
8 argues that the bid procedures should not be approved because  
9 Karma contends that it owns an infotainment system, a trade  
10 secret IP it contends was misappropriated by the debtors.  
11 Karma also contends that its ownership (indiscernible), which  
12 had never been decided by any Court, must be litigated to  
13 resolution as part of an adversary proceeding under Rule 7001  
14 before the bidding procedures could (indiscernible). We filed  
15 our reply at Docket No. 154, which is supported by the  
16 declarations of Mr. Kroll and Mr. Finger at Docket Nos. 156  
17 and 157.

18           Your Honor, the debtors, unsurprisingly, object --  
19 sorry, I believe that the objection is without merit and that  
20 they should be overruled. We based our arguments in support  
21 of the motion, both in the motion and in the reply. I am not  
22 going to rehash every point, but I would like to focus on a  
23 few.

24           Let's start with the standard. The decision to  
25 market and sell assets is a business judgement. It's a

1 business to which the debtor's business judgment is entitled  
2 to substantial deference. Bidding procedures should be  
3 approved if the debtors have articulated a reasonable business  
4 justification. Here, bidding procedures are appropriate, they  
5 will promote an active process for the debtor's assets on a  
6 timeline that meets the debtor's needs. That is the testimony  
7 of Mr. Finger. Mr. Kroll testified to the risks of delay.  
8 There is no contrary testimony and no party can reasonably  
9 contest that the procedures are reasonable. The bidding  
10 procedures should be approved for that reason alone.

11           Second, the relief that the debtors are seeking as  
12 part of the bid procedures order is purely for security. It  
13 doesn't prejudice Karma or its asserted claims of ownership in  
14 any way. We actually thought it was clear to begin with, but  
15 we actually added language to Paragraph 35 of the proposed  
16 order that is now before Your Honor and I would like  
17 (indiscernible) avoidance of any doubt, nothing in this order  
18 shall constitute (A) approval of any sale, (B) a finding that  
19 any property is property of the debtor's estates, (C) a  
20 finding regarding the rights or interests that any property  
21 may have with respect to property (indiscernible) or property  
22 that is in the possession, custody or control of any debtor or  
23 (D) a determination regarding whether a sale of any property  
24 may occur absent an adversary proceeding pursuant to  
25 Bankruptcy Rule 7001.

1           The rights of the debtors, the committee and all  
2 other parties in interest are fully reserved with respect to  
3 these issues. Karma is, therefore, objecting to relief that  
4 really has no impact on it in asking the Court to delay the  
5 debtor's marketing and sales process. There is no support for  
6 that request and the Court should decline to do it. We did  
7 cite the Durango case in our reply in which the Court  
8 overruled a bid procedures objection based on asserted  
9 interests citing the procedural nature of the bid procedures.  
10 We think the same outcome is warranted here.

11           Third, Karma's objection is, at best, a premature  
12 sale objection and the Court need not and should not  
13 (indiscernible). The objection is premature both because  
14 debtors are not seeking approval of a sale at this time and  
15 also because the debtors don't know, nor does Karma, what  
16 sale, if any, they are going to seek approval of. Rule  
17 7001(2) speaks to an adversary proceeding to determine  
18 interest in property, but we don't know whether the debtors  
19 are seeking to sell any property in which Karma claims to have  
20 interest.

21           We are still in the early stages. While there are a  
22 number of parties doing work, indications of interest are due  
23 until July 31st and final bids won't be due until August 24th.  
24 So, in sum we don't know whether or not the (indiscernible)  
25 for which Karma claims to have an ownership interest will have

1 any bearing on the sale that the debtors actually pursued, nor  
2 do we know what the structure of such sale will be. A bidder  
3 could decide that it doesn't -- you know, even if it has some  
4 interest in an infotainment system it may put in its own  
5 infotainment system. It may say, you know, I've looked at the  
6 Karma lease and I don't value it. There are any number of  
7 ways that this sale can be teed up. And we don't need to  
8 decide these issues today, particularly before we have  
9 narrowed the issue of what the debtors are actually seeking to  
10 sell as part of a transaction.

11           The debtors do own a number of assets over which  
12 Karma simply cannot make that ownership interest. Mr. Kroll  
13 testified to it, including the hub motor. These are all  
14 assets that Karma just doesn't have a claim over, at least not  
15 to my knowledge. So, in sum, Karma's alleged claims of  
16 ownership may just be irrelevant here.

17           Fourth, Karma's arguments that its purported rights  
18 of ownership need to be decided as part of a precondition to  
19 having bid procedures is both wrong and contrary to the  
20 Bankruptcy Court. Here, I will start with the proposition  
21 that while we are not seeking approval of the sale today, the  
22 bankruptcy code does permit sales notwithstanding the asserted  
23 interest of other parties. Section 363(f) provides that a  
24 sale of property may be approved notwithstanding the bonafide  
25 (indiscernible) other party's interest. Section 363(p)

1 provides that the burden is on a non-debtor party to prove its  
2 interest in the property, not the other way around.

3 This and other courts have approved sales of  
4 intellectual property notwithstanding disputes about the  
5 ownership of that property. And the reason that these  
6 provisions exist, as this court has recognized, is that  
7 debtors are often in precarious financial positions and the  
8 delay of a sale, while property interests are (indiscernible)  
9 value.

10 Now the sale justifies, you know, moving forward it  
11 certainly (indiscernible) approval of the bid procedures. Its  
12 contrary to the code to acquire such an adjudication  
13 particularly (indiscernible). And now Karma cites to the  
14 Whitehall decision, that is notable because that was a sale  
15 decision. The Court had actually approved bidding procedures  
16 in that case.

17 Finally, Karma argues that the Court should not  
18 enter bidding procedures because there is not any urgency to  
19 the debtor's Chapter 11 cases or to the sale process. I mean  
20 that argument is contrary to the testimony that Mr. Kroll  
21 provided, that Mr. Finger provided. There is urgency. It's  
22 not the case that the debtors came in with \$136 million that  
23 there is no urgency to move forward. There's cash burn here,  
24 there is a risk of employee attrition, and that employee  
25 attrition gets heightened the longer these cases and the sale

1 process, in particular, move on. That can to lead to a  
2 decline in the value.

3 That brings me back to where I started which is  
4 business judgment standards. The debtor's business judgment  
5 and all of these factors warrant moving forward with the  
6 bidding procedures now. We can address Karma's issues at the  
7 appropriate time and we would ask the Court to overrule the  
8 objection.

9 If Your Honor has any questions about either my  
10 argument or the nature of the bidding procedures themselves, I  
11 am happy to take them at this time.

12 THE COURT: No. Let me hear from the other parties  
13 first.

14 MR. TURETSKY: I will reserve though -- obviously, I  
15 will come back on the line if needed.

16 THE COURT: That's fine.

17 MR. TURETSKY: Thank you, Your Honor.

18 THE COURT: Does the committee wish to be heard?

19 MS. KOVSKY-APAP: Yes. Thank you, Your Honor.  
20 Deborah Kovsky, Troutman Pepper, for the committee.

21 Your Honor, the reality here is that there is going  
22 to be a sale of the debtor's assets one way or another.  
23 Whether it's a going concern sale broken into parts. There is  
24 really no other path here.

25 Now Karma's argument seems to be that since there is

1 not a perfect process to be had at the moment, there should be  
2 no process at all. The committee believes that that would be  
3 disastrous and value destructive. As the testimony that Your  
4 Honor heard shows, if you want to have a shot at a going  
5 concern sale it can't be put on hold through a jury trial,  
6 post-trial briefing, entry of judgment, the full appeals  
7 process, it's not just the reality of bankruptcy.

8 We are in a certain situation and we need to find a  
9 way to move forward. The committee's view is let's allow this  
10 process to play out, let's see what bids actually come in,  
11 let's see whether and to what extent they actually even  
12 implicate any of the IP that Karma disputes because maybe we  
13 don't even have an issue here.

14 As Mr. Turetsky pointed out, this is really a sale  
15 objection, not a process objection. We are not even going to  
16 be able to figure out if we have a sale objection unless that  
17 process moves forward. And this is a little bit intertwined  
18 with the estimation motion, so I am probably getting a little  
19 ahead of the agenda, but we do believe that while the sale  
20 process moves forward and while the debtors are generating  
21 what value they can for the estates here, which the committee  
22 is, obviously, very interested in seeing, you know, let's try  
23 to get all of the stakeholders to the table and see if there  
24 is a more economical consensual path forward as this process  
25 plays out, but the process should not be delayed for a lengthy

1 time or possibly almost indefinitely while value arose,  
2 employees leave, the possibility of a going concern sale  
3 evaporates, that would just be destructive to the value that  
4 the committee is laser focused on preserving.

5 THE COURT: Okay. I will hear from Karma.

6 MR. SOWKA: Thank you, Your Honor. James Sowka on  
7 behalf of Karma Automotive LLC.

8 Your Honor, we heard some very troubling testimony  
9 today from the debtor's representative and the debtor's  
10 investment banker. They acknowledged that they understand  
11 that there is a dispute over the intellectual property and  
12 that the debtor may not own it and may not be able to sell it.  
13 Nevertheless, the investment bankers are not informing  
14 prospective buyers about this issue. It is an incredibly  
15 troubling issue.

16 Counsel has argued that, well, maybe buyers will  
17 want to buy it. Well, it's hard for them to make the  
18 determination when it's kept secret to them and they're  
19 pointing to some sale SEC disclosures from before the  
20 bankruptcy and saying, well, there is some discussion there,  
21 its up to buyers to figure out.

22 This is a very concerning process and I wonder aloud  
23 if this may not potentially bring claims against estate  
24 professionals for what they are not disclosing with respect to  
25 what is going on in this case to potential buyers, Your Honor.



1 Moreover, the process is fundamentally flawed. They  
2 acknowledged there is a dispute over the debtor's ownership.  
3 This isn't about Karma's rights; this is about the debtor's  
4 rights and whether they are property of the estate. The bid  
5 procedures process that they are setting forth doesn't provide  
6 a timeline to resolve whether or not the property they are  
7 seeking to sell is actually in the estate and belongs to the  
8 debtors. So, it's fundamentally flawed. They can't go  
9 forward.

10 As Your Honor is well aware, Bankruptcy Rule 7001(2)  
11 in the Whitehall Jewelers decision makes clear that when the  
12 debtor's interest in property is subject to dispute it has to  
13 be resolved through an adversary proceeding. That is a full  
14 trial. The debtor's efforts to shoehorn this into an  
15 estimation proceeding don't work and the Court is either going  
16 to have to lift the stay to allow the trial to be concluded or  
17 conduct an adversary proceeding through 7001.

18 The debtor claims to be in a hurry to go forward  
19 with the sale, but yet they don't want to proceed with the  
20 determination of Karma's property rights interest. Instead,  
21 they are trying to estimate and liquidate damages which  
22 doesn't resolve whether or not the debtor owns any of the  
23 intellectual property that Karma alleges was misappropriated.

24 Your Honor is well aware, Section 363(b)(1) allows a  
25 debtor to sell property of the estate. The debtor's sale

1 procedures motion concedes this point, sell property of the  
2 estate. Property of the estate includes all legal and  
3 equitable interest of the debtor. The Whitehall Jewelers  
4 decision is on point on this and says that:

5 "A bankruptcy court may not allow the sale of  
6 property of the estate without first determining whether the  
7 property is actually in the estate."

8 They are not seeking to make this determination.  
9 Instead, they point to, you know, potentially disputed  
10 interest in Karma and point to 363(f). That is a red herring  
11 and besides the point. The issue is that the debtor's interest  
12 are disputed. This isn't a case where the debtor is trying to  
13 sell real property that everyone agrees that the debtor owns  
14 and there's a secured creditor with a disputed lien. The  
15 fundamental nexus of this dispute is whether or not the  
16 debtors (indiscernible) what they are attempting to sell here.

17 Your Honor, the Sixth Circuit's decision in Kitchen  
18 v. Boyd (In Re Newpower), 233 F.3d 922, Sixth Circuit 2000, is  
19 instructive. We cite to this in our brief. The Newpower Court  
20 addressed an instance where there was property that was  
21 misappropriated by a debtor pre-bankruptcy through larceny or  
22 embezzlement. The court analyzed applicable state law and  
23 found that the debtors obtained void title, and because title  
24 was void it wasn't in the estate and the debtors couldn't sell  
25 it. That is precisely the fact pattern we are dealing with

1 here.

2 Karma has been litigating with the debtors for three  
3 years now, alleging willful misappropriation of its  
4 intellectual property. To the extent that Karma prevails on  
5 those claims the debtor's title is void, it is not within the  
6 contours of the estate and cannot be sold through Section 363.

7 So, the sale procedure process where they are hiding  
8 the ball from buyers, not disclosing the property rights  
9 issue, and proposing a timeline in which the property rights  
10 issue can't and wouldn't be resolved its fundamentally flawed  
11 and the Court shouldn't approve and enter into this process.  
12 We believe it would unnecessarily dissipate and waive  
13 professional fee assets in spending resources and pursuing a  
14 sale that ultimately couldn't happen.

15 I have nothing further to add, Your Honor, unless  
16 you have any questions.

17 THE COURT: All right. Any response?

18 MR. TURETSKY: Yes, Your Honor. David Turetsky of  
19 White & Case on behalf of the debtors.

20 Karma is arguing as though their interests have  
21 already been adjudicated. Again, they are asserting interest  
22 in intellectual property that has been incorporated -- that  
23 they alleged was misappropriated and incorporated into their  
24 vehicles. This is very different then the situation in  
25 Whitehall. Whitehall involved consignment of goods where the

1 decision that we are looking at looked at the consignment of  
2 contracts and found that there was prima facie evidence that  
3 the consigned goods belonged to the vendors, consignment  
4 vendors in question because that is what the contract said.  
5 And because there were SEC filings in which the debtors  
6 acknowledged that the consigned goods were not property of the  
7 estate. What the Judge in the Court in that case did was it  
8 said if you want to proceed with the sale, unless you are able  
9 to provide adequate protection, which is a possibility, you  
10 need to go and initiate an adversary proceeding.

11 Here, Karma is asserting a right, a misappropriation  
12 that has never actually been litigated to completion. They  
13 are seeking to impose upon the debtors an obligation and a  
14 burden of proof that the debtors simply don't have, not in the  
15 California (indiscernible). All of this is actually  
16 premature. This is a sale objection. Again, these are  
17 procedures. To the extent that a bidder comes in with a bid  
18 that hits on assets over which Karma has an interest, and we  
19 will deal with it at that point and we can deal with it at  
20 that point.

21 What we cannot do is put the entire process on hold  
22 while these issues to be litigated over assets -- for assets  
23 that may or may not implicate their issues while we risk  
24 losing the employee team and burning estate assets. I also  
25 want to touch on the idea that the debtors are hiding the ball

1 from bidders. That is simply not true. You heard the  
2 testimony which is the expectation that bidders who are  
3 serious about this actually know and acknowledge what is in  
4 the public filings and what is going on in the bankruptcy.  
5 The idea that we're hiding the ball from people simply is not  
6 true.

7           To the extent that Your Honor would like, you know,  
8 to tell people or put a link to the docket we can do that or  
9 the public filing we can do that. I don't think there is any  
10 hiding the ball here. Frankly, if Karma had asked us to do  
11 that we might have considered it. They said file an  
12 objection. They didn't engage on any procedures.

13           Lastly, I go back to where I started. The issue  
14 here is whether there is an appropriate exercise of business  
15 judgment. We believe that is the debtor's business judgment.  
16 The committee, which is the other fiduciary in the case, also  
17 believes that these marketing procedures and bid procedures  
18 are appropriate. We don't believe that Karma, as an  
19 individual creditor with its individual agenda, should be  
20 allowed to upset things and delay the marketing and sale  
21 process indefinitely while the estate loses money, and  
22 potentially employees, and value.

23           THE COURT: Okay. Anybody else?

24           MS. KOVSKY-APAP: Your Honor, Deb Kovsky for the  
25 committee. Everything that we've heard from Karma is

1 effectively a sale objection, not a procedures objection. Mr.  
2 Sowka says the Court can't approve a sale under these  
3 circumstances, but there's obviously no request that the Court  
4 approve a sale at this point.

5           The committee strongly believes that there needs to  
6 at least be some process to move forward to see whether value  
7 can be realized for the benefit of creditors of the estate and  
8 it may be, as this process plays out, it may be that Karma's  
9 IP is never even implicated in the assets that a purchaser  
10 actually wants to take. So it might not be an issue or a  
11 purchaser might take subject to the disputed ownership  
12 interest, or there could be a negotiated resolution in the  
13 meantime while the sale process moves forward. But to say  
14 let's put this process on hold, let the estate continue to  
15 burn unsecured creditors' cash while Karma disputes ownership  
16 and doesn't even allow a determination to be made whether  
17 those ownership interests are going to be implicated in the  
18 sale just doesn't make any sense.

19           THE COURT: All right. Well, thank you.

20           Well, let me just say one thing. We may want to wait  
21 until next week, Monday, to see if there are any indications  
22 of interest. However, I think it is important that I let the  
23 parties know now of my concerns about the bid procedures.

24           I am very concerned that Jefferies is not informing  
25 the parties that there is a dispute about the title to assets.

1 I'm very concerned. Jefferies is a representative of the  
2 debtor, the debtor has a fiduciary interest and, as a party in  
3 the court before me that is going to be asking for a sale  
4 order at some point, I'm very concerned. There was no  
5 testimony that the public filings are in fact in the data  
6 room.

7 My second concern is, quite frankly, I think that  
8 the expedited nature of this is manufactured by the debtor.  
9 There are no deadlines for sale or milestones imposed by any  
10 secured creditor because there is no secured creditor. The  
11 unsecured creditors assert that they are concerned with the  
12 erosion of the debtors' assets when there is over \$130 million  
13 in cash at the debtor and the trade creditors in the top 30  
14 creditors are approximately 20 million.

15 The debtor asserts that it may lose employees  
16 necessary to enter sale, any sale as a going concern, but  
17 given the allegations of Karma it is unclear whether any  
18 going-concern bid will be received.

19 In addition, the debtor ceased production, fired  
20 much of its workforce before and after bankruptcy. So, if  
21 this is an emergency, it may be an emergency of the debtors'  
22 own creation. And, specifically, the time deadlines that the  
23 debtor has given appear not to be based on any erosion of cash  
24 or any concern of the loss of employees, but appears to be  
25 designed solely to get this done before any Karma decision can

1 be made in the California litigation. I just don't see how,  
2 quite frankly, it is possible.

3           The debtor asserts that it has property that is not  
4 implicated by the Karma lawsuit, but I don't know how that can  
5 be determined without a decision on exactly what Karma may or  
6 may not own that the debtor asserts it owns. I agree with  
7 Karma that the debtor cannot sell something that the debtor  
8 cannot establish is the debtors' property. All of the cases  
9 regarding 363(f)(4) deal with disputed issues of liens or  
10 other interest in property that the debtor admittedly owns.

11           So I am going to continue a determination about the  
12 procedures that will be set for sale of the debtors' assets.  
13 I do want to see if any indications of interest come in Monday  
14 and I'm going to suggest that we have a continued hearing  
15 after they are received sometime next week.

16           I am available Wednesday, Thursday, and Friday.  
17 I'll ask the parties to reach out to discuss this and to reach  
18 out to Ms. Farrell -- Ms. Capp is not in this morning,  
19 although she'll be in this afternoon -- but to reach out to my  
20 chambers to see about a continued hearing date on the sale  
21 procedures.

22           MR. TURETSKY: Thank you, Your Honor, we'll do that.

23           THE COURT: Let's talk about the relief-from-stay  
24 motion then.

25           MR. SOWKA: Thank you, Your Honor, James Sowka on



1 behalf of Karma Automotive again.

2           Your Honor, we believe that the Court should grant  
3 Karma's motion to lift the stay to permit the California  
4 District Court action to be litigated to conclusion, and to  
5 liquidate the claims and determine the property rights  
6 interest.

7           We believe, based on the evidence presented today,  
8 that Karma has satisfied the three-prong test necessary to  
9 establish cause for lifting the stay. As Your Honor has  
10 already ruled, Karma, based on the fact that it has survived  
11 summary judgment, has established a likelihood of success in  
12 the litigation sufficient to carry its burden.

13           Your Honor, with respect to the first prong, the  
14 debtors will not be prejudiced by lifting the stay. The  
15 debtors have argued that they would be prejudiced by  
16 distraction of their management and costs of completing the  
17 trial. However, distraction isn't an issue because they're  
18 seeking to hold an expedited claim estimation hearing  
19 contemporaneous with when the District Court trial would go  
20 on. So they're seeking to litigate it at the same exact time  
21 anyway, the difference there being they want to start over  
22 from the beginning with new counsel instead of complete a  
23 trial which would be done by the end of September and is  
24 essentially ready to go for trial but for two depositions, a  
25 motion to strike, and an expert rebuttal report.

1           Your Honor, furthermore, as far as the cost  
2 associated with it, the debtors estimate that the cost to  
3 complete the trial would be \$2.5 million in the California  
4 District Court. They have not submitted any cost estimate for  
5 what it would cost to start over from the beginning and  
6 litigate the entire case before Your Honor. And they've  
7 indicated that they're currently burning in excess of \$2  
8 million a month on bankruptcy administrative fees, and that  
9 doesn't include the professional fees who are already  
10 indicating that they seek to intercede to get involved in the  
11 entirety of the litigation to (indiscernible) it's not clear  
12 that there would be any benefit to anyone other than  
13 committee's professionals for them to be able to participate  
14 in that litigation.

15           So, Your Honor, we don't think there's any prejudice  
16 whatsoever to the debtor on this. And, again, their  
17 opposition to the lift-stay motion ignores the fact that the  
18 sale can't occur until the property rights issues are resolved  
19 pursuant to Whitehall Jewelers.

20           They're saying there is an urgency to go forward  
21 with the sale. Your Honor has already found that that's a  
22 debtor-created emergency, that it is not a true expedited  
23 emergency. There's no secured creditor here, there's no  
24 substantial operations. The sale doesn't need to proceed on  
25 such an expedited path and, frankly, can't be consummated

1 until these property rights issues are resolved.

2           So there simply is no prejudice to the debtor in  
3 resolving this. As a matter of fact, we believe it's  
4 beneficial to the estate and all creditors, including Karma  
5 and the other trade creditors, to resolve the property rights  
6 issues promptly and expeditiously and economically, and the  
7 way to do that is to lift the stay to allow the trial to be  
8 concluded.

9           Your Honor, we also -- as Your Honor has already  
10 ruled, you know, the sale procedures are going to be postponed  
11 to next week, we'll see if any indications of interest come  
12 in, but, you know, if they don't receive any indications of  
13 interest at that time, that's additional, you know, facts  
14 showing that there is no emergency, no need to proceed on an  
15 expedited basis with respect to, you know, adjudicating a  
16 sale.

17           This trial should be allowed to go forward; it is  
18 not a distraction to management. There is no plan and  
19 disclosure statement on file, no confirmation process has been  
20 begun, there are, as Your Honor pointed out, no substantial  
21 operations.

22           With respect to the second prong, Your Honor, the  
23 hardship to Karma of maintaining the automatic stay, it would  
24 significantly outweigh any hardships to the debtors. Your  
25 Honor, the parties have been litigating this for nearly three

1 years. As Mr. Wexler testified, there have been over 50  
2 depositions, more than 12 expert depositions, more than 12  
3 million documents exchanged in discovery. The parties have  
4 already filed and the Court has ruled on motions *in limine*,  
5 the parties have filed and the Court has ruled on summary  
6 judgment. The case is essentially ready for trial and would  
7 have gone to trial already in April but for the debtors'  
8 request to substitute their damages expert.

9           So we believe, you know, that the hardship to Karma  
10 in postponing the trial, which it's ready to go, would  
11 significantly outweigh any hardships to the debtor.

12           Moreover, the litigation in California involves  
13 numerous non-debtor defendants. To the extent this Court were  
14 to retain jurisdiction over the dispute and decide it, it  
15 would still leave Karma out there having to resolve its claims  
16 against the other individual defendants. These claims  
17 include, as Mr. Wexler testified, injunctive relief because  
18 the individuals were also in possession of the disputed  
19 intellectual property, they were the ones that misappropriated  
20 it, as shown in the filing, they transmitted it through  
21 personal accounts and other means and were in personal  
22 possession of it.

23           So it's important that Karma's claims against the  
24 non-debtor defendants beyond this Court's jurisdiction also  
25 have to get resolved, that would be an additional hardship to

1 Karma to the extent that the Court didn't modify the automatic  
2 stay to allow the California District Court actions to be  
3 litigated to conclusion.

4 Your Honor, and finally with respect to the  
5 committee's joiner and concerns about, you know, their right  
6 to participate. Yes, the Code says they have a right to  
7 participate in the litigation. Of course, if Your Honor  
8 modifies the stay, it would then be up to the District Court  
9 Judge (indiscernible) to decide if he's going to allow them to  
10 participate and in what capacity. And, again, I have not  
11 heard any showing on why it would benefit the estate in any  
12 way, shape, or form for the committee to come in and  
13 participate in litigation that's been going on for three  
14 years. So we just don't see any merit to them -- their  
15 insistence that they be allowed to be a third wheel in this  
16 litigation between two parties.

17 Your Honor, based on this, if you have no further  
18 questions, I believe Karma has satisfied its burden of proof  
19 and the Court should modify the stay.

20 THE COURT: Thank you.

21 MR. ZAKIA: Good afternoon -- or at least here in  
22 Chicago, good morning, Your Honor, Jason Zakia of White & Case  
23 for the debtors. Let's take the different prongs one at a  
24 time.

25 I'd like to address the prejudice to the debtors and

1 their other constituencies of lifting the stay. And I think  
2 it's important to note -- I heard what Your Honor said, but  
3 the testimony was clear that the time frame upon which this  
4 issue can get resolved is critical to the ability to preserve  
5 the option of a going-concern sale. Now, of course, nobody  
6 can guarantee that a buyer will want to do that and we'll know  
7 more in short order as to whether that's going to happen, but  
8 Mr. Kroll did testify that, notwithstanding the cutbacks and  
9 notwithstanding the layoffs that the debtors had made today,  
10 they have preserved critical employees who would be necessary  
11 in order to facilitate a handoff of this business as a going  
12 concern to any buyer and should those people leave, that is an  
13 option, a potentially value-maximizing option, that gets  
14 destroyed.

15 And so we would submit, Your Honor, that that is a  
16 real harm.

17 Also, the cost of the proceeding with a jury trial,  
18 and the time and attention that it will take away, are also  
19 real harms that courts have routinely recognized and accepted  
20 as reasons to maintain a stay. Indeed, if one looks at the  
21 reason why the stay exists, it's to address exactly these  
22 concerns. It is to give the debtor breathing space.

23 This case has been in bankruptcy for a month, it has  
24 a host of different litigation issues all around the country,  
25 of which Karma is one. And so putting a stop to those

1 litigations is a quintessential purpose of the automatic stay  
2 and one of the primary tools available to debtors.

3           So there is this parallel question of the fact that  
4 these issues may or may not, depending on what happens with  
5 the sale, also have to be resolved by this Court. And I think  
6 that gets -- and I'm not here to criticize our jury system and  
7 I'm certainly not here to criticize any court, but there is a  
8 fundamental difference in the systems that are in place to  
9 complete a jury trial from the way the Bankruptcy Courts work.  
10 That's not to say one is good and one is bad, but they are  
11 different, and Bankruptcy Courts are specifically built to  
12 deal with these issues more quickly and efficiently than non-  
13 Bankruptcy Courts.

14           And it's not the case, Your Honor, that you would  
15 necessarily need to go back to the beginning and re-litigate  
16 everything that's happened in California. There are really  
17 two different issues that this Court may have to grapple with  
18 -- well, one, it would definitely have to grapple with, the  
19 other one we don't know. It's what's the Court going to do  
20 with the sale. Obviously, any sale that the debtors seek to  
21 conduct under 363 has to be blessed by Your Honor before it  
22 can go through. We don't know at this point who the buyer is,  
23 we don't know what the terms are, and so, therefore, it's very  
24 hard to -- we don't know what the subject matter of the sale  
25 is. So at this point it's hard to judge what that dispute

1 looks like because, as Mr. Turetsky mentioned, this is all in  
2 anticipation of a sale that we hope to achieve, but don't know  
3 yet whether that will happen.

4 And there are different ways the Court could deal  
5 with that in the context of a sale objection, in the context  
6 if the Court determines it needs to do an adversary, but  
7 that's one issue that the Court would have to resolve.

8 Estimation, Your Honor, deals with a separate  
9 problem, which is Karma has asserted a billion-dollar claim  
10 against this estate that is, if it were to be allowed in even  
11 a fraction of that amount, by far the largest claim and would  
12 have a dramatic impact on the recovery of other stakeholders,  
13 be they creditors or equity; we don't know yet where the  
14 waterfall falls. And estimation could provide an efficient  
15 and quick mechanism for the Court to put a number on that  
16 claim, which is a separate question from whether the Court  
17 could or could not approve a sale. Those are two different  
18 issues that the Court would have to grapple with.

19 If what Karma is suggesting, and I think it is, is  
20 that Your Honor lift the stay to allow the jury trial to  
21 complete and then wait for the conclusion of that process --  
22 and as we note, Your Honor, there will be a jury verdict,  
23 there will be post-trial briefing, there's then an appeal, so  
24 this is not something that will be done in September.  
25 Effectively, at that point, should we follow Karma's



1 suggestion, the uncontroverted testimony is that that would  
2 eliminate the option for a going concern. And, again, I can't  
3 promise Your Honor that that's what's going to happen here, I  
4 can't promise Your Honor that there's going to be a buyer that  
5 does that, but the testimony is that there are people doing  
6 diligence that could potentially be going-concern buyers and  
7 we would urge the Court that it would cause substantial harm  
8 to the debtors to chill that option at this point, this early  
9 in the sale process, and we would urge the Court not to do  
10 that.

11           If what Karma wanted to do was proceed to liquidate  
12 their claim in the jury trial while this Court reserves the  
13 right to determine what is or is not property of the estate -  
14 - and, to be clear, determining what is or is not property of  
15 the estate is something that Bankruptcy Courts certainly have  
16 jurisdiction to do and do routinely, and it falls within Your  
17 Honor's core competencies -- while allowing a parallel  
18 proceeding to go on in California, that's wasteful and harms  
19 everybody.

20           So it seems like there are three options. Your  
21 Honor could keep the stay in place -- that doesn't need to be  
22 forever -- keep the stay in place and Your Honor always has  
23 the option of lifting it at a later date while things play out  
24 and we see how the process falls.

25           Option two, Your Honor could lift the stay and allow

1 all of these issues that are essential to the ability of this  
2 estate to sell its assets to be resolved in another court  
3 that's going to take at least many months to resolve and  
4 effectively eliminate the option of a going-concern sale.  
5 And, you know, some -- Karma and others have argued that  
6 there's nothing here to save, I would suggest that the  
7 argument leads to a self-fulfilling prophesy, and what the  
8 debtors and the committee and the other estate professionals  
9 are trying to do is to avoid that and actually maximize value  
10 for all stakeholders.

11 Or, three, if Your Honor were to hybrid and allow  
12 them to go liquidate their claim in bankruptcy -- or outside  
13 of bankruptcy while retaining the jurisdiction over the sale  
14 and determining what's property of the estate, we create an  
15 inefficient, wasteful dual-track process that I don't think  
16 anybody wants.

17 And so I think at this point, Your Honor, with  
18 regard to harm to the debtor, you really have to consider is  
19 the Court at a point now where it is prepared to eliminate  
20 that option and to pull the plug, effectively, on the thought  
21 of a going-concern sale, and leave us in a situation where the  
22 employees won't be there to transition the operations to a new  
23 buyer, should a new buyer exist. And of course, if that's  
24 what happens, Your Honor, we'll do our best to sell the pieces  
25 for as much as we can, but I don't think there is any basis to

1 determine that that is an optimal result and I don't think  
2 there's any basis in the evidentiary record to determine  
3 that's an inevitable result.

4 And so we would strongly urge the Court to heavily  
5 weigh that prejudice and that harm to be suffered by these  
6 estates should the stay be lifted at this point.

7 On the flipside with regard to Karma, Karma, like  
8 all creditors -- and I don't blame them for this -- want to  
9 get paid. They want to liquidate their claim and they want to  
10 do that as quickly as they can, I get that, Your Honor, but  
11 just like all creditors, there is a process through the  
12 bankruptcy to allow that to happen.

13 We've offered estimation, which, you know, courts  
14 have recognized -- and we cited to two of them in our briefs,  
15 Your Honor, the Choice Enterprises case and the John Q.  
16 Hammons case -- that even if non-bankruptcy litigation is  
17 close to the end, so both of those cases involved situations  
18 such as here where most of the work in the trial court was  
19 done and you were a month or two away from trial and a lot of  
20 work had been done in the non-bankruptcy court, and those  
21 courts recognized that even in situations where a lot of work  
22 has gone into a non-bankruptcy forum, the Bankruptcy Court is  
23 uniquely suited to deal with these issues in an efficient way.  
24 You don't need to duplicate all of the discovery and all of  
25 the work, that can be imported, and it's not imported to

1 replicate a two-week jury trial. As Your Honor is well aware,  
2 be it in the context of a sale objection or be it in the  
3 context of an estimation proceeding, the Bankruptcy Court has  
4 the flexibility to deal with these things more efficiently  
5 than a jury trial, and so that work can be narrowed. And, as  
6 both of those courts held, even in cases where you had a --  
7 had a case that was close to trial-ready or on the verge of  
8 trial, leaving the stay in place and resolving the issues that  
9 needed to be resolved through the bankruptcy claims process  
10 was in the best interest of those estates and we would suggest  
11 Your Honor should find it's in the best interest of these  
12 estates.

13 And, again, what I would urge Your Honor to consider  
14 is, as this process unfolds, should Your Honor lift the stay  
15 today, it's very difficult to foresee circumstances in which  
16 that gets re-imposed in the future, and we're kind of off on  
17 that path and we'll all live with the consequences of Your  
18 Honor's decision, I understand. If Your Honor keeps the stay  
19 in place today, Your Honor always retains the discretion to do  
20 what you want to do in the future as events warrant and unfold  
21 and as we have more information. And we would argue that  
22 lifting the stay at this point is damaging to the estates and  
23 we would urge to do it.

24 So I'm happy to answer any questions Your Honor has,  
25 but with that I'll stop talking.

1 THE COURT: No, thank you. I understand your  
2 position.

3 Does the Committee wish to be heard?

4 MS. KOVSKY-APAP: Yes, thank you, Your Honor.

5 The Committee's perspective is, like, this is just  
6 very premature, very early in the case. The Committee has  
7 just been appointed; its professionals have been in place for  
8 about a week and while we're working as expeditiously as we  
9 can, there's still a lot we need to get our arms around. We  
10 just haven't had the opportunity to do that.

11 And given the early stage of the case, the ongoing  
12 sale process, the Committee thinks it's really critical to  
13 give some breathing room, not just to the debtors, but,  
14 really, to the Committee and to the unsecured creditors. We  
15 need time to get our arms around the issues in the case, dive  
16 into the sale process, whatever form that may take, and figure  
17 out how to best maximize value for the estates.

18 We're very concerned about value destruction if the  
19 stay is lifted. Notwithstanding Mr. Sowka's perspective that  
20 there would be no value to the Committee's involvement in the  
21 District Court case, the fact remains, it's a billion-dollar  
22 "bet the farm" litigation that will mean the difference  
23 between trade creditors getting paid in full with interest or  
24 maybe getting pennies on the dollar. And the exercise of the  
25 Committee's fiduciary obligations, it's very hard to see how,

1 given our statutory right to intervene, we sit back and do  
2 nothing.

3 All of the other litigants in this case had their  
4 cases put on hold so that the bankruptcy case can take  
5 priority. Other cases we've seen, opioid cases, mass tort  
6 cases, matters that are on the eve of trial are regularly  
7 stayed to give the debtors, the Committee, constituents time  
8 to try to figure out a better path.

9 The Committee believes that the district court  
10 litigation will be a massive drain on the financial and human  
11 resources of the estates from both, the debtor and the  
12 Committee's perspective.

13 And Mr. Zakia said, The Court can always revisit  
14 this issue later on in the case. But the Committee's view, as  
15 we noted in our papers, the throwing of this case back to what  
16 is likely to be years of trial, post-trial briefings, appeals,  
17 hard-fought litigation in district court, that's really the  
18 last resort; other things should be tried first and we think  
19 the Court has other options at its disposal that at least  
20 warrants a try, before the stay is lifted and we're off to the  
21 races with litigation.

22 THE COURT: All right. Any response?

23 MR. SOWKA: Yes, Your Honor. Mr. Sowka on behalf  
24 of Karma Automotive.

25 Your Honor, with respect to the arguments regarding

1 the time frame for resolution, we have a September 5th  
2 trial date there. You know, each side has been given 26.5  
3 hours to present their case. Mr. Wechsler testified it will  
4 likely be resolved by the end of September.

5 To the extent that it's resolved in California,  
6 yes, there's the possibility of one appeal, but to the extent  
7 it's resolved here, we have to start over from the beginning  
8 and create some process to do that. We assert it would  
9 require a fulsome adversary proceeding and, of course, in  
10 bankruptcy, you have two-tier appellate rights. So the  
11 parties are ignoring the delay and the additional costs  
12 associated with that.

13 As to the debtors' arguments regarding the  
14 employees and the potential harm -- they may be lost if a sale  
15 is delayed -- well, there's no bidders. The debtors have been  
16 marketing themselves for two years. There's no bidders that  
17 have come forward.

18 And the testimony wasn't that all the employees  
19 would be let go or would leave. It was that they could  
20 possibly leave if they were delayed.

21 Of course, there are tools that the debtor has at  
22 its disposal. It has cash on hand available to use. It could  
23 propose a KERP or some other mechanism to the extent that it  
24 really believes the going-concern value for the company and  
25 maintaining the employees in place.

1           As to the cost and distraction issues that they  
2 argued, again, they're proposing to do the same litigation at  
3 the same time just before the Bankruptcy Court. So there's  
4 going to be costs.

5           The debtors didn't submit any evidence on what  
6 their estimate would be to start the litigation over in the  
7 bankruptcy court, nor did their fee estimates include the  
8 Committee costs. So we simply don't know, but I suspect it  
9 would be exponentially more expensive to do the litigation  
10 over from the beginning with White & Case here in the  
11 bankruptcy court than it would be to finish the trial be Baker  
12 Hostetler in California.

13           Moreover, Your Honor, Karma's claims is unsecured,  
14 so the claim doesn't need to be liquidated in order for the  
15 sale to proceed. All that has to happen is it's the property  
16 of rights issues. But the debtor and the Committee are  
17 avoiding that issue. They're talking about liquidating the  
18 damages claim, but they don't want to talk about deciding the  
19 property rights issues, which have to be done through an  
20 adversary proceeding.

21           So there's no benefit for proceeding with the claim  
22 estimation, because it's not going to facilitate a sale; it  
23 simply isn't helpful. And delaying the Court's decision on  
24 lifting the stay isn't going to help the debtors, who have  
25 asserted that it's critical this they promptly get to a sale.



1           The only way we get to a sale is there an adversary  
2 proceeding or completing the district court trial. Karma  
3 strongly believes it's best for all parties in interest to  
4 complete the California trial. We understand why they don't  
5 want to go there; they've been sanctioned twice. There's  
6 adversary inference instructions that have been ordered by the  
7 District Court. They can't submit additional evidence  
8 contrary to their arguments and the evidence that they've  
9 already propounded at trial, they're trying to run from that.  
10 And they also have limitations on the substitution of their  
11 new damages expert, that they can't go beyond the substantive,  
12 four corners of the prior report.

13           So, we understand they're trying to get a do-over  
14 on this, but it simply is prejudicial to Karma to allow that  
15 to happen. And, again, you have nondebtors here that are  
16 beyond the Court's jurisdiction.

17           The claims in California, with respect to the other  
18 defendants, are going to have to be resolved one way or the  
19 other. We believe that it's in the best interests of the  
20 debtor, the creditors, and the estate to allow this to go  
21 forward.

22           And, finally, as far as the Committee's arguments  
23 that it's harmful for creditors, we're surprise about that  
24 because the Committee is not a committee of trade creditors;  
25 it is a committee of unsecured creditors. And that would

1 include litigation claimants, but they seem to be taking the  
2 position that they want to have the claims of litigation  
3 claimants reduced or disallowed while the claims of trade  
4 creditors are allowed in full, and we don't think that's in  
5 compliance with their fiduciary duties and what the Committee  
6 was appointed for. So, that's also a concern with respect to  
7 the arguments they've raised and we don't think a valid  
8 consideration the Court should take into account in its ruling  
9 today.

10 And I ask, if Your Honor has no further questions,  
11 I have nothing further to add.

12 THE COURT: No, thank you.

13 All right. Let me issue my ruling on the relief  
14 from stay motion. This case is not like the typical pre-  
15 bankruptcy litigation that should remain stayed. This is not  
16 mass torts that only involve claims against the estate.

17 The critical issue in this case is whether the  
18 debtors' own property that they want to sell. And issue in  
19 the California case is whether the property that the debtor  
20 wishes to sell was stolen from Karma and, therefore, Karma has  
21 title to that property and the debtor does not.

22 Given the debtors' and even the Committee's  
23 argument that it is critical to proceed with a sale now, I  
24 think it is critical to have that issue decided. I think the  
25 appropriate thing is for the California Court that has devoted

1 three years to conducting discovery, addressing pretrial  
2 motions, and is fully familiar with these facts, should decide  
3 those issues.

4 I can grant relief from the stay to allow the  
5 California trial to proceed to verdict and the decision of  
6 post-trial motions expeditiously. I think that, in fact, if  
7 the verdict is sufficient to address the title issue and the  
8 post-trial motions don't involve that issue, it can come back  
9 to me to decide how, and what property is owned by the debtor,  
10 and how it can proceed with the sale process.

11 But the verdict will assist me. Let me make it  
12 clear: I am not going to try that issue. The issue involves  
13 12 million documents. It involves 54 depositions, 14 experts  
14 who intend to testify. I don't see how I can do it.

15 I don't think the estimation process is  
16 appropriate. The amount of the claim is not the issue here.  
17 What is at issue is title to this process to the assets.

18 In addition, without evaluating or making any value  
19 judgment, it is true the bankruptcy process is different. It  
20 is a summary process would the benefit of all of the facts,  
21 all of the documents, all of the witness testimony. I just  
22 don't think it is appropriate for a bankruptcy court to  
23 estimate whether or not the debtor has title and I'm not aware  
24 that anybody has used the estimation process in that regard.

25 I think that judicial economy, contrary to the

1 debtors' argument, is best served by allowing the Court, the  
2 California Court to proceed with this; again, because I cannot  
3 do it even in a summary process easily.

4 In evaluating the Rexene factors, I have already  
5 decided that success in the underlying suit is a low bar to  
6 meet and is met here because the lower court -- I won't even  
7 say lower court -- the District Court in California has  
8 already decided a summary judgment motion and has denied, in  
9 part, the motion filed by the defendants. So there is some  
10 merit to the claims of Karma.

11 Karma will be prejudiced if it cannot proceed in  
12 California to adjudicate its claims to title to the IP after  
13 three years of litigation. And it has a right to proceed  
14 against the nondebtor defendants, who are not covered by the  
15 automatic stay. They are not protected and Karma should not  
16 have to try this case twice. And it may not be able to get  
17 full relief on its claims against the individual or nondebtor  
18 defendants without the debtor participating. The.

19 The debtors' assertions of prejudice are less  
20 clear. First, it says that management will be diverted and  
21 have to deal with this trial, rather than the bankruptcy  
22 process. Debtors' management are going to have to deal with  
23 this issue, whether it's tried in this court or it's tried in  
24 California, so that is not prejudice to the debtor.

25 The debtor asserts that it's prejudiced because it

1 may lose employees if there's any significant delay. I just  
2 will note that there are means by which a debtor can protect  
3 and preserve and retain its employees. I have not seen a  
4 retention motion here, a KERP motion, or any of the other  
5 means by which debtors typically assure that employees remain  
6 during critical processes, such as a sales process.

7           The debtor in its pleadings asserted that I have  
8 exclusive jurisdiction to decide title to property. While  
9 that may be true, my decision on title to the property will be  
10 greatly assisted by allowing the California Court to rule on  
11 the specific claims of whether or not the individual  
12 defendants and the debtor stole the intellectual property of  
13 Karma and used that property to develop their own systems in  
14 making the Endurance vehicle.

15           So, judicial economy supports letting that Court  
16 decide the issues it has before it before I decide any title  
17 to property of the estate.

18           The debtor asserts prejudice in the cost to  
19 complete the trial. I find that that's not supported by the  
20 record. The trial is estimated by the debtor to take \$2 and a  
21 half million to complete; again, the debtor has over \$130  
22 million in cash and the debtor is going to have to spend  
23 something close to that amount if it tries to go through an  
24 estimation proceeding or any other summary proceeding here to  
25 try to get me to decide the title issue.

1           The debtor also asserted that granting relief from  
2 the stay is -- to allow the Karma litigation to proceed might  
3 cause a race to the courthouse because there's a lot of other  
4 litigation pending and they might want relief from the stay.  
5 But to my knowledge, there's no other litigation pending  
6 outside -- in other courts that implicates titles to the  
7 debtors' property. And if there is, I would like the debtor  
8 to tell me.

9           Mr. Zakia?

10          MR. ZAKIA: No, Your Honor.

11          THE COURT: All right. This is not, again,  
12 deciding the amount of the claim; this is deciding what the  
13 debtor owns and does not own.

14          Again, I think that allowing the California trial  
15 to proceed, we should have a verdict sometime in September and  
16 that is a couple of week push off of any sale process. Quite  
17 frankly, as I suggested, I think it might inform whether or  
18 not the debtor gets any bids for its assets or gets any going-  
19 concern bid.

20          So, I will wait to see, again, next week, what sale  
21 process we can put together. But I think in the meantime, I'm  
22 going to quote one of my colleagues in talking about relief  
23 from stay analysis.

24          Judge Goldblatt said:

25          That this analysis ultimately boils down to a

1 common sense judgment about whether it makes good sense to  
2 have the case proceed in the court where it was pending, as  
3 opposed to being heard in the bankruptcy court.

4 In this case, I find it makes good case to let the  
5 Karma case proceed in California before I decide the title  
6 issues that might be implicated by the sale process.

7 Let me talk about the Committee's point that it has  
8 the right to intervene in California. It is correct under the  
9 Phar-Mor case, it may have a right to intervene as a right  
10 under Section 1109, but I do want to caution the Committee to  
11 seriously evaluate whether it wants to do that, because I'm  
12 going to be the one deciding the Creditors Committee's  
13 professional fees. And I will not approve any fees that are a  
14 mere duplication of what the debtors' professionals have and  
15 are doing.

16 In this regard, it appears that the debtors'  
17 interests align with those of the creditors and other  
18 stakeholders in this case. The debtor has a fiduciary duty to  
19 vigorously defend the California action. It says it is doing  
20 so and there is no evidence that the debtors will not fulfill  
21 their fiduciary duty in that regard.

22 So, at this point, I can see of no need for the  
23 Committee to intervene. With that caution, I will grant the  
24 motion from the relief from the stay.

25 And I don't think we need to talk about the

1 estimation proceeding, because I think it's moot by this  
2 decision.

3 MR. ZAKIA: Understood, Your Honor.

4 THE COURT: I would like the parties to consult  
5 with each other regarding a proposed form of order for each of  
6 my rulings. I may not have to do it on the sale process; I'll  
7 just continue that hearing until next week.

8 But for the relief from stay, I'd like the parties  
9 to submit an agreed form of order under certification of  
10 counsel, okay.

11 MR. ZAKIA: Understood.

12 MR. SOWKA: Thank you, Your Honor.

13 THE COURT: All right. Then we can stand  
14 adjourned.

15 COUNSEL: Thank you, Your Honor.

16 (Proceedings concluded at 12:28 p.m.)  
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

July 28, 2023

William J. Garling, CET-543  
Certified Court Transcriptionist  
For Reliable

/s/ Tracey J. Williams

July 28, 2023

Tracey J. Williams, CET-914  
Certified Court Transcriptionist  
For Reliable

/s/ Mary Zajackowski

July 28, 2023

Mary Zajackowski, CET-531  
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